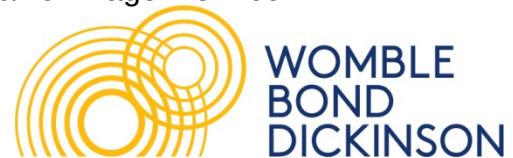


EXHIBIT D



April 11, 2019

Womble Bond Dickinson (US) LLP

VIA EMAIL

Federal Communications Commission
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**Re: FOIA Request File No. EB-IHD-16-00023247 –
Requester's Response to T-Mobile April 1, 2019
Requests for Confidential Treatment**

Dear Mr. Knowles-Kellett:

We are writing on behalf of the Requesters in response and opposition to T-Mobile USA, Inc.'s ("T-Mobile" or "Submitter") April 1, 2019 Requests for Confidential Treatment ("T-Mobile FOIA Letter") regarding the above referenced FOIA Request ("Request"), which seeks access to, *inter alia*, the documents obtained and considered by the Federal Communications Commission's ("FCC" or "Commission") Enforcement Bureau ("EB") in its investigation of T-Mobile's conduct that led to the Consent Decree issued on April 16, 2018 ("Consent Decree").¹

I. INTRODUCTION.

The Commission has repeatedly denounced call blocking tactics as posing dire threats to our nation's telecommunications system² and has for more than a decade investigated and fined carriers that

¹ See *In re T-Mobile USA, Inc.*, Order and Consent Decree, 33 F.C.C.R. 3737 (2018) ("Consent Decree").

² See, e.g., *In re Rural Call Completion*, Second Report and Order and Third Further Notice of Proposed Rulemaking, 33 F.C.C.R. 4199, at *1, ¶ 1 (2018) ("Second RCC Order") ("All Americans should have confidence that when a call is made to them, they will receive it. But, for Americans living in rural or remote areas of the country, too often that is not the case.... [T]he[se] [call completion] failures have serious repercussions, imposing needless economic and personal costs, and potentially threatening public safety in local communities."); *In re Rural Call Completion*, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd. 16154, 16160-61, ¶ 13 (2013) ("First RCC Order") (stating that, despite the Commissions' prior declaratory rulings and other actions, "the record leaves no doubt that the problems of completing calls to rural areas ... continue to be frequent and pervasive throughout rural America. The inability to complete calls reliably threatens public safety and contravenes the public interest."); *In re Developing an Unified Intercarrier Comp. Regime*, Declaratory Ruling, 27 FCC Rcd. 1351, 1351-52, ¶ 2 (2012) ("[P]oor call quality, as well as [] calls ringing for prolonged periods of time for the caller but that do not ring, or ring on an extremely delayed basis, on the receiving end ... have dire consequences: Small businesses can lose customers who get frustrated when their calls don't go through. Urgent long distance calls from friends or family can be missed. Schools may be unable to reach parents with critical alerts, including school closings due to extreme weather. And those in need of help may be unable to reach public safety officials.") (footnotes omitted); *FCC Enforcement Advisory*, Public Notice, 28 FCC Rcd. 10347, 10347 (2013) ("These rural consumers are harmed when calls do not reach them: businesses lose orders, medical professionals are unable to reach patients, and family members cannot check on loved ones.... Resolving rural call completion problems is a top priority of the Commission.").



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have devised business strategies aimed at reducing the volume of calls placed by their customers to areas served by rural telephone carriers. As the Commission is well aware, its recent investigation of T-Mobile led to a Consent Decree, whereby T-Mobile agreed to pay a \$40 million dollar fine for its willful and illicit practices.³ In the Consent Decree, T-Mobile admitted it engaged in two forms of illegal activity: (1) violating Section 64.2201's prohibition against the insertion of false ring tones; and (2) failing to correct problems with its intermediate providers' delivery of calls to consumers in certain rural areas.⁴ T-Mobile's rural call completion-related legal troubles do not, however, end here.

T-Mobile is also currently embroiled in a legal dispute over its "One Penny Policy," pursuant to which it worked with its known intermediate provider, Inteliquent Inc. ("Inteliquent"), to quell call traffic destined to certain rural phone numbers by inserting messages to deter completion of those calls.⁵ In the Inteliquent lawsuit, T-Mobile is not a party, but it is an active third party that has made extensive filings to contest a subpoena and has provided testimonial evidence.⁶ In that case, it recently came to light that T-Mobile and Inteliquent executive witnesses lied in their depositions about whether they coordinated the implementation of the One Penny Policy, and their lies were exposed by a lower-level Inteliquent employee who revealed that T-Mobile and Inteliquent had over one hundred meetings to coordinate this terminating access charge avoidance strategy.⁷

T-Mobile has publicly exposed itself outside of the Commission's Consent Decree and has become known for its illegal business practices aimed at reducing, choking, impeding, deterring, and limiting call completion to rural operating company numbers ("OCNs"),⁸ despite the Commission's express prohibition of such practices since at least 2007.⁹ T-Mobile's claim that the evidence it submitted to the Commission exposing its grossly illegal practices is competitively sensitive is undermined by the fact that T-Mobile agreed it would no longer employ those business practices. Therefore, the Commission's disclosure of information detailing T-Mobile's former acts is not likely to pose a substantial risk of competitive harm. Moreover, disclosure of T-Mobile's former cost-cutting tactics of inserting false ring tones into calls destined for rural OCNs and its failure to "correct problems with its intermediate providers' delivery of calls to consumers in certain rural OCNs" are no longer of competitive value because the practices were officially extinguished by the Consent Decree.¹⁰

T-Mobile's unsupported claims of competitive harm if the Commission's investigation file is disclosed are also undermined by its lack of evidentiary support. T-Mobile submitted no evidence to back up its speculative claims that disclosure of the information it submitted to the Commission will reveal information competitors may affirmatively use in ways likely to cause substantial harm.

³ See Consent Decree, 33 F.C.C.R. at *10, ¶ 24.

⁴ *Id.* at *7, ¶ 17.

⁵ See generally *Inteliquent, Inc. v. Free Conferencing Corp. et al.*, No. 1:16-CV-06976 (N.D. Ill. Filed July 5, 2016) ("Inteliquent Lawsuit") [Doc Nos 117, 130, 134, 136, 145, 148, 156, 240-41, 270, 422, 500-01, 503].

⁶ See generally Inteliquent Lawsuit.

⁷ See Defs.' Mem. Supp. Mot. Compel T-Mobile USA, Inc. Produc. Docs. & Witnesses, & for Removal of Confid. Designations & Sanctions, *Inteliquent, Inc. v. Free Conferencing Corp. et al.*, No. 1:16-CV-06976 (Doc. No. 491) (Jan. 25, 2019).

⁸ See *id.*

⁹ See *In re Establishing Just and Reasonable Rates for Local Exch. Carriers*, 22 FCC Rcd. 11629, 11631, ¶ 6 (2007).

¹⁰ Consent Decree, 33 F.C.C.R. at *7, ¶ 17.



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T-Mobile also advances intellectually dishonest arguments, especially by claiming the identities of its intermediate providers are competitively secret despite the fact that the identity of its primary intermediate provider, Inteliquent, is already publicly known.

Finally, T-Mobile's claims of competitive sensitivity are tainted by its stated concern that disclosure of the documents in this file could cause competitors to "criticize T-Mobile's performance" or spur "class action and other litigation."¹¹ Disclosure of evidence that is embarrassing, unfavorable, or that may support civil claims is not a valid or recognized exemption.¹² The public's interest in disclosure of the facts supporting T-Mobile's admission of rampant illegal activity that has defrauded rural America, as well as T-Mobile's own customers, heavily outweighs T-Mobile's desire to avoid besmirchment of its public image or liability to its victims.

II. THE COMMISSION SHOULD PRODUCE ALL DOCUMENTS IN THE FILE REFERRED TO IN PARAGRAPHS 7-9 OF THE CONSENT DECREE BECAUSE T-MOBILE DID NOT ASSERT CONFIDENTIALITY REQUESTS OVER THEM.

T-Mobile did not request confidential treatment of the submissions it made to the Commission that are referenced in Paragraphs 7 through 9 of the Consent Decree; therefore, at a minimum, the Commission should promptly produce all such documents to Requesters.

Specifically, Paragraph 7 of the Consent Decree indicates that, from June 2016 through the summer of 2016, the Commission received complaints from three rural incumbent LECs in Wisconsin alleging over "40 incidents in which T-Mobile customers were unable to complete calls to consumers served by these three rural providers" and experienced false ringtones.¹³ According to the Consent Decree, at the request of the EB, T-Mobile submitted reports of its investigation into these complaints to the Commission, which indicated, in part, that in each case "T-Mobile ... had handed the call off to an intermediate provider for delivery, and that any reported problems had been 'resolved.'"¹⁴ T-Mobile's FOIA Letter makes no reference to these reports or its communications with the EB and/or Commission regarding this investigation, which all appear to have been submitted to the Commission in the ordinary course before the Commission issued its first LOI in December 2016; yet, due to their reference in the Consent Decree, such documents appear to be part of the Commission's investigation file.¹⁵

Paragraph 9 of the Consent Decree indicates that, in addition to the complaints from rural ILECs in Wisconsin, in August 2016 three T-Mobile customers filed informal complaints against the carrier with the Commission's Consumer and Governmental Affairs Bureau ("CGB").¹⁶ The Consent Decree states that, in response to these complaints, "[r]ecords subsequently obtained from T-Mobile show that, in addition to filing complaints, together, these consumers called T-Mobile at least 13 times between June 5 and August 18."¹⁷ Just like the documents referenced in Paragraph 7, T-Mobile's FOIA Letter makes no specific confidentiality request with respect to these documents. And because these documents are also

¹¹ T-Mobile FOIA Letter at 5.

¹² See *infra* notes 40-42 and accompanying text.

¹³ Consent Decree, 33 F.C.C.R. at *5, ¶ 7.

¹⁴ *Id.* ¶¶ 7-8.

¹⁵ See 47 C.F.R. § 1.717 (requiring carriers to provide a written response to informal complaints received by the Commission).

¹⁶ Consent Decree, 33 F.C.C.R. at *5, ¶ 9.

¹⁷ *Id.*



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part of the Commission's investigation file due to their reference in the Consent Decree, the Commission should disclose them to Requesters.

In sum, since (other than its Form 480 Reports) the T-Mobile FOIA Letter only requests confidentiality over the documents it produced in response to the LOIs, which started with its "February 9 [2017] Filing," none of the documents it produced to the Commission prior to that should be withheld under Submitter's confidentiality requests.¹⁸

III. T-MOBILE'S CONFIDENTIALITY REQUESTS REGARDING THE NAMES OF ITS INTERMEDIATE PROVIDERS ARE FRIVOLOUS BECAUSE THE IDENTITY OF ITS PRIMARY INTERMEDIATE PROVIDER IS ALREADY PUBLIC.

T-Mobile's request for confidential treatment of the names or identities of its intermediate providers should be denied because this information is already public, thereby making it immune from any and all FOIA exemptions.¹⁹

The T-Mobile FOIA Letter requests confidential treatment of the following:

February 9 Filing	Names of T-Mobile intermediate carriers (Exhibit 2, throughout)
July 13 Filing	Names of T-Mobile intermediate carriers (Exhibit 1, throughout)
August 2 Filing	Identities of T-Mobile intermediate providers (pp. 2-9) Names of T-Mobile intermediate carriers (Exhibits 1-3, throughout)

On August 13, 2015, Inteliquent publicly disclosed, in an SEC filing, that it entered into a three-year Telecom Master Services Agreement and a related services agreement ("PSTN Agreement") with T-Mobile, which provides that T-Mobile "will generally use Inteliquent as its sole provider of voice interconnection services for all calls exchanged between T-Mobile and nearly all other voice providers in the United States."²⁰ Inteliquent publicized this deal with T-Mobile in a press release,²¹ and Inteliquent also publicly disclosed the PSTN Agreement itself.²² Thus, since 2015, the identity of T-Mobile's primary intermediate provider and their commercial agreement have been matters of public record, meaning that the mere name or identity of an intermediate provider is not confidential or competitively sensitive information that the Commission cannot release.

¹⁸ See T-Mobile FOIA Letter app. (listing categories of submissions for which T-Mobile seeks confidential treatment, but failing to include those documents and communications referenced in Paragraphs 7 through 9 of the Consent Decree in its list).

¹⁹ See *Cottone v. Reno*, 193 F.3d 550, 554 (D.C. Cir. 1999) ("Where information requested 'is truly public, then enforcement of an exemption cannot fulfill its purposes.'") (quoting in part *Niagara Mohawk Power Corp. v. Dep't of Energy*, 169 F.3d 16, 19 (D.C. Cir. 1999); see also *id.* ("[M]aterials normally immunized from disclosure under FOIA lose their protective cloak once disclosed and preserved in a permanent public record.").

²⁰ Inteliquent, Inc., Current Report (Form 8-K), at 2 (Aug. 13, 2015) (attached hereto as **Exhibit A**).

²¹ See INTELIQUENT, *Inteliquest Announces Entry into Breakthrough Agreement* (Aug. 17, 2015), available at <https://www.inteliquest.com/about-us/news-media/press-releases/inteliquest-announces-entry-into-breakthrough-agreement> (attached hereto as **Exhibit B**).

²² Inteliquent attached the PSTN Agreement to its October 29, 2015 SEC Form 10-Q Report to the SEC. See Inteliquent, Inc., Quarterly Report (Form 10-Q), exh. 10.2 (Oct. 29, 2015) (attached hereto as **Exhibit C**). While Inteliquent appears to have redacted the financial terms of the PSTN Agreement, it still provides significant insight into the commercial relationship between Inteliquent and T-Mobile.



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T-Mobile has admitted to inserting illegal false ringtones in calls destined for rural America and was caught defrauding its own customers who placed those calls. Yet, T-Mobile appears willing to make false representations to the Commission in a misguided effort to substantiate confidentiality protections to which it is not entitled. T-Mobile's brazen willingness to overreach and falsely claim that obviously public information is competitively sensitive should cause the Commission to look upon all of its other unsubstantiated claims of competitive sensitivity with great skepticism.²³

IV. T-MOBILE HAS FAILED TO PRESENT THE COMMISSION WITH ANY EVIDENCE THAT IT WILL LIKELY SUFFER SUBSTANTIAL COMPETITIVE HARM IF ITS CONFIDENTIALITY REQUESTS ARE NOT ACCEPTED.

A. Standards For Evaluating Confidentiality Requests Under Exemption 4.

1. *The Commission Bears The Burden To Demonstrate An Exemption.*

As the Commission is well aware, FOIA was established to pull the general public out of the dark when it comes to government action, including government investigations. As the D.C. Circuit so eloquently explained:

[T]he public cannot make intelligent decisions without [] information, and [] governmental institutions become unresponsive to public needs if knowledge of their activities is denied to the people.... The touchstone of any proceedings under the Act must be the clear legislative intent to assure public access to all governmental records whose disclosure would not significantly harm specific governmental interests. *The policy of the Act requires that the disclosure requirement be construed broadly, the exemptions narrowly.*²⁴

In the event a court is tasked with determining whether the Commission has justifiably refused to release information pursuant to any FOIA exemption, that court will conduct *de novo* review of the FOIA request and the Commission's justifications for withholding information to ensure any FOIA exemption(s) asserted has been properly invoked and supported.²⁵ At all times, then, "[t]he burden is on the agency to

²³ The Commission should also consider that it now requires more transparency with respect to the identity of intermediate providers that carriers like T-Mobile rely on. For example, enacted on February 26, 2018, the Improving Rural Call Quality and Reliability Act ("RCC Act") directed the Commission to develop a publicly available registry of intermediate providers. See 47 U.S.C. § 262(d) (requiring the intermediate provider registry to be publicly available on the Commission's website); *see also In re Rural Call Completion*, Third Report and Order and Order, 33 F.C.C.R. 8400, at *2, ¶ 6 (2018) ("Third RCC Order") (stating that all registration information required to be provided by intermediate providers "will be made publicly available"). As a result, the identities of the intermediate providers that may be used by a covered provider, like T-Mobile, must now be made public, which further undermines T-Mobile's claim that the identity of its intermediate providers is competitively secret information.

²⁴ *Soucie v. David*, 448 F.2d 1067, 1080 (D.C. Cir. 1971) (emphasis added).

²⁵ See 5 U.S.C. § 552(a)(4)(b); *see also Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 755 (1989) ("Unlike the review of other agency action that must be upheld if supported by substantial evidence and not arbitrary and capricious, the FOIA expressly places the burden 'on the agency to sustain its action' and directs the district courts to 'determine the matter *de novo*.'") (footnote omitted); *War Babes v. Wilson*, 770 F. Supp. 1, 2 (D.D.C. 1990).



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demonstrate, *not the requester to disprove*, that the materials sought may be withheld due to an exemption.”²⁶

When the Commission is asked by a submitting party to assert an exemption, FOIA’s general policy in favor of disclosure – and the courts’ recognition that the requester is at a distinct disadvantage²⁷ – mandates that such exemptions be construed narrowly.²⁸ Moreover, in the event the Commission’s invocation of an exemption is litigated in court, the Commission’s justification for applying any exemption will be heavily scrutinized, such that it will be required to show “that the documents sought fall *clearly beyond* the range of material [subject to disclosure],”²⁹ which generally will be satisfied “solely on the basis of ... affidavits or declarations [that] ‘describe the documents and the justifications for nondisclosure with reasonably specific detail, demonstrat[ing] that the information withheld logically falls within the claimed exemption, and are not controverted by either contrary evidence in the record nor by evidence of agency bad faith.’”³⁰ The Commission’s duties do not, however, end there, as it must also prove to the court that “*each document that falls within the class requested* either has been produced, is unidentifiable, or is wholly or partially exempt from FOIA’s requirements.”³¹ The Commission cannot meet its burden of proof when the submitting party, in this case T-Mobile, relies on conclusory statements and fails to submit evidence to substantiate claims of substantial competitive harm.

2. FOIA Exemption 4 Analysis.

T-Mobile’s objection to disclosure of the documents sought by Requesters is almost entirely based on Section 552(b)(4) of FOIA (“Exemption 4”), which protects from disclosure “trade secrets and commercial or financial information obtained from a person [that are] privileged or confidential.”³² Where, as here, the information being analyzed under this exemption does not contain trade secrets, such information will only be exempted from disclosure if it is (1) commercial or financial in nature, (2) obtained from a person, and (3) privileged or confidential. Here, only point three, *i.e.*, whether the information sought to be protected is privileged or confidential, is in dispute.

²⁶ *Vaughn v. U.S.*, 936 F.2d 862, 866 (6th Cir. 1991) (citing *Dep’t of Justice v. Tax Analysts*, 492 U.S. 136, 142 (1989)) (emphasis added).

²⁷ See, e.g., *Cuneo v. Schlesinger*, 484 F.2d 1086, 1091 (D.C. Cir. 1973) (“[P]rocedures most often used in FOIA cases permit the Government very easily to avoid disclosure. Since the party seeking disclosure does not know the contents of the information sought, he cannot argue as effectively that the documents sought are, for example, ‘secret law’ to which he is entitled access. In contrast, the Government does have access to the information and with confidence can convincingly argue to the trial judge that the factual nature of the information is as the Government alleges.”); see also *Ollestad v. Kelley*, 573 F.2d 1109, 1110 (9th Cir. 1978) (“The burden of proof is on the agency claiming exemptions from the statutorily-imposed duty to disclose information, and the court must apply that burden with an awareness that the plaintiff is at a distinct disadvantage in attempting to controvert the agency’s claims.”).

²⁸ See *Soucie*, 448 F.2d at 1080 (“The policy of the Act requires that the disclosure requirement be construed broadly, the exemptions narrowly.”).

²⁹ *EPA v. Mink*, 410 U.S. 73, 93 (1973) (emphasis added).

³⁰ *Maryland v. Dep’t of Veterans Affairs*, 130 F. Supp. 3d 342, 349 (D.D.C. 2015) (quoting in part *Military Audit Project v. Casey*, 656 F.2d 724, 738 (D.C. Cir. 1981)); see also *Mink*, 410 U.S. at 93 (“An agency should be given the opportunity, by means of detailed affidavits or oral testimony, to establish to the satisfaction of the District Court that the documents sought fall clearly beyond the range of material [subject to disclosure].”).

³¹ *Goland v. CIA*, 607 F.2d 339, 352 (D.C. Cir. 1978) (internal quotation marks and citation omitted) (emphasis added).

³² 5 U.S.C. § 552(b)(4).



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Under FOIA precedent, there are two unique tests through which courts will determine whether the information requested is privileged or confidential – the *National Parks* test, which applies in cases where a party seeks access to information involuntarily submitted to the government (i.e., mandatory submission),³³ and the *Critical Mass* test, which applies in cases where a party seeks access to information voluntarily provided to the government (i.e., voluntary submission).³⁴ Where parties have made FOIA inquiries to obtain documents obtained by an agency pursuant to an investigation or a consent decree proceeding, courts have considered such documents to be “mandatorily” or “involuntarily” provided.³⁵ T-Mobile provided documents to which Requesters seek access in the context of a Commission investigation and/or consent decree proceeding. Therefore, the documents were involuntarily provided to the agency,³⁶ meaning the *National Parks* test governs.

When the *National Parks* test controls, an objective, two-part test must be employed to determine whether information meets the “confidentiality” requirement in § 552(b)(4), and under this test such information will only be considered confidential “if disclosure of the information is likely ... (1) to impair the Government’s ability to obtain necessary information in the future [the ‘impairment’ prong]; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained [the ‘competitive harm’ prong].”³⁷ Here, T-Mobile only invokes the competitive harm prong.³⁸

With respect to a court’s – or agency’s – analysis under the competitive harm prong, the D.C. Circuit has emphasized that the “important point for competitive harm in the FOIA context ... is that it be limited to harm flowing from the affirmative use of *proprietary information by competitors*” and that this “should not be taken to mean simply any injury to competitive position, as might flow from customer or employee disgruntlement.”³⁹ Accordingly, the D.C. Circuit, as well as several other courts, has held that the harms flowing from “embarrassing disclosure[s]” are not cognizable under the competitive harm

³³ See *Nat'l Parks & Conservation Assoc. v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974).

³⁴ See *Critical Mass Energy Project v. NRC*, 975 F.2d 871, 879 (D.C. Cir. 1992).

³⁵ For example, in *Center for Public Integrity v. Department of Energy*, 234 F. Supp. 3d 65, 75 (D.D.C. 2017), the D.C. District Court held that a government contractor’s submission of contracts with its vendors and slides, presentations, and other information regarding its contract bid had been submitted involuntarily where the National Nuclear Security Administration (“NNSA”) had opened an investigation into the contractor’s bidding practices and had requested the documents through a “seven-day notice letter.” As the D.C. District Court explained, “the so-called seven-day notice letter sent here by NNSA offered [the contractor] no real choice—[the contractor] either could produce the documents ‘voluntarily’ or OIG would compel their production. The very real specter of government compulsion renders [the contractor’s] production here involuntary for purposes of Exemption 4.” *Id.* at 75. Other courts have also found that documents submitted pursuant to an agency investigation require application of the *National Parks* test. See, e.g., *COMPTEL v. FCC*, 910 F. Supp. 2d 100, 115 (D.D.C. 2012) (“*COMPTEL II*”); *Finkel v. Dep’t of Labor*, No. 05-5525 (MLC), 2007 WL 1963163, at *6 (D.N.J. June 29, 2007).

³⁶ Note also that, despite the fact that T-Mobile’s Form 480 Reports were not submitted pursuant to the Enforcement Bureau’s investigation, such reports would still be subject to the *National Parks* test, as T-Mobile was required to submit these reports under the Commission’s rules, which the courts recognize as another form of “mandatory” submission. See, e.g., *Lykes Bros. S.S. v. Pena*, No. 92-2780, slip op. at 8-11 (D.D.C. Sept. 2, 1993) (holding that submissions are “compelled” where required by agency statute).

³⁷ *Nat'l Parks*, 498 F.2d at 770.

³⁸ T-Mobile seems to agree that the *National Parks* standard is the test the Commission must apply when determining whether the requested documents should be released. See, e.g., T-Mobile FOIA Letter at 5 (asserting that “T-Mobile will face the likelihood of substantial competitive injury should the information and documents in question be released”).

³⁹ *Pub. Citizen Health Research Grp. v. Food & Drug Admin.*, 704 F.2d 1280, 1291 n.30 (D.C. Cir. 1983) (emphasis in original).



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prong of Exemption 4.⁴⁰ For example, in *Occidental Petroleum Corp. v. SEC*,⁴¹ the D.C. Circuit held that a submitter could not challenge disclosure under the competitive harm prong of Exemption 4 on the basis that disclosure of the submitter's illegal payments to government officials could hurt its business. As the court explained, the submitter's "right to an exemption, if any, depends upon the competitive significance of whatever information may be contained in the documents," and the court found the submitter's motive for seeking confidential treatment to avoid embarrassing publicity was "simply irrelevant."⁴²

FOIA precedent also places other limitations on the scope of Exemption 4 that are particularly salient here. For example, at least one court has recognized that Exemption 4 "cannot be used to shield illegal business practices under the guise of confidential business information."⁴³ Moreover, courts have also emphasized that the risk of commercial harm flowing from disclosure is limited in time, meaning that information can only be withheld as confidential during the time within which disclosure would be competitively harmful to the submitter, but no longer.⁴⁴

3. *The Commission's Burden In Evaluating T-Mobile's Exemption 4 Claims.*

As noted above, where, as here, the Commission is asked to exempt documents from disclosure under Exemption 4, the Commission should not do so unless it can meet the *National Parks* test and establish that "disclosure of the information is likely to ... cause *substantial harm* to the competitive position of [T-Mobile]."⁴⁵ Although T-Mobile is entitled to express its views as to how release of the documents may cause it substantial competitive harm, the Commission's reliance on T-Mobile's views to establish exemption "is not sufficient to satisfy [the Commission's] FOIA obligations."⁴⁶ Rather, the Commission must "determine for itself whether the information in question should be disclosed."⁴⁷

If the Commission determines that Exemption 4 applies, and such decision is challenged in court, the burden will be on the agency, *not T-Mobile*, to prove that Exemption 4 has been properly invoked. The Commission must support any nondisclosure decision with firm evidence – not merely general, conclusory assertions, but rather facts supported by sworn affidavit testimony – showing that disclosure is likely to cause T-Mobile substantial competitive harm.⁴⁸ Courts have repeatedly rejected competitive

⁴⁰ *Gen. Elec. Co. v. Nuclear Regulatory Comm'n*, 750 F.2d 1394, 1402 (7th Cir. 1984); see also *CAN Fin. Corp. v. Donovan*, 830 F.2d 1132, 1154 (D.C. Cir. 1987); *United Techs. Corp. v. Dep't of Def.*, 601 F.3d 557, 564 (D.C. Cir. 2010).

⁴¹ See 873 F.2d 325, 341-42 (D.C. Cir. 1989).

⁴² *Id.* at 341; see also *Ctr. for Pub. Integrity*, 234 F. Supp. 3d at 76.

⁴³ *Ctr. for Pub. Integrity*, 234 F. Supp. 3d at 76.

⁴⁴ See *Biles v. Dep't of Health & Human Servs.*, 931 F. Supp. 2d 211, 225-26 (D.D.C. 2013); *Lee v. FDIC*, 923 F. Supp. 451, 455 (S.D.N.Y. 1996) (rejecting competitive harm argument because "financial information in question is given for [a period two years previously] and any potential detriment which could be caused by its disclosure would seem likely to have mitigated with the passage of time").

⁴⁵ *Nat'l Parks*, 498 F.2d at 770 (emphasis added).

⁴⁶ See 47 C.F.R. § 0.461(d)(3); *Lee*, 923 F. Supp. at 455; see also generally *id.* (determining that financial information submitted by bank to Federal Reserve Board as part of process for approval of merger was not exempt from disclosure under FOIA absent adequate documentation for bank's assertions of substantial competitive injury and absent an independent agency determination as to whether financial information should be disclosed).

⁴⁷ *Id.*; see also *Nat'l Parks*, 498 F.2d at 767 (concluding that, in justifying nondisclosure, submitter's treatment of information is not "the only relevant inquiry;" rather, the agency must also be satisfied that harms underlying exemption are likely to occur).

⁴⁸ See, e.g., *Black Hills All. v. Forest Serv.*, 603 F. Supp. 117, 121 (D.S.D. 1984) (finding agency affidavits inadequate, ordering disclosure, and noting that "[i]t is significant that [the submitter] itself has not submitted an



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harm claims, and have ordered disclosure, when agencies failed to support non-disclosure decisions with adequate documentation from the submitting party.⁴⁹

As will be illustrated below, T-Mobile did not provide the Commission with enough facts, evidence, or effort to back up its conclusory claims that disclosure of the requested materials is likely to cause it substantial competitive harm. Therefore, the Commission should find Exemption 4 not applicable in every instance where T-Mobile failed to supply the Commission with adequate evidence of likely substantial competitive harm.

affidavit addressing" the issue of competitive harm); *N.C. Network for Animals v. Dep't of Agric.*, No. 90-1443, slip op. at 8-9 (4th Cir. Feb. 5, 1991) (finding "evidence presented by" agency "insufficient to support" its burden, remanding case, and noting absence of sworn affidavits or detailed justification for withholding from submitters); *Newry Ltd. v. Customs & Border Prot. Bureau*, No. Civ. A. 04-02110 HHK, 2005 WL 3273975, at **6-7 (D.D.C. July 29, 2005) (upholding competitive harm argument following agency's submission of supplemental declarations, including one from submitter); cf. *N.Y. Pub. Interest Research Grp. v. EPA*, 249 F. Supp. 2d 327, 330 (S.D.N.Y. 2003) (rejecting an agency's assertion that disclosure would impair its ability to obtain similar information in the future, ordering disclosure, and noting that submitter had not provided "any affidavits or taken a position" on the documents at issue).

⁴⁹ See, e.g., *Wiley Rein & Fielding v. Dep't of Commerce*, 782 F. Supp. 675, 676 (D.D.C. 1992); *Black Hills All.*, 603 F. Supp. at 121; *N.C. Network for Animals*, No. 90-1443, slip op. at 8-9; *Pentagon Fed. Credit Union v. Nat'l Credit Union Admin.*, No. 95-1475-A, slip op. at 4-5 (E.D. Va. June 7, 1996) (rejecting competitive harm argument, noting failure of agency even to give notice to submitters who, in turn, ultimately provided sworn declarations to requester explicitly stating disclosure would *not* cause them harm); *Newry Ltd.*, 2005 WL 3273975, at **6-7; *Brown v. Dep't of Labor*, No. 89-1220 (JHG), 1991 WL 11693237, at *7 (D.D.C. Feb. 15, 1991) (denying competitive harm claim, ordering disclosure, and noting failure of submitters to object to disclosure); cf. *N.Y. Public Interest Research Grp.*, 249 F. Supp. 2d at 330.



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B. T-Mobile Has Not Shown The Materials It Claims Are Competitively Sensitive Are Subject To Exemption 4.

1. *The Documents T-Mobile Claims Fall Within Exemption 4.*

The documents and information T-Mobile claims falls within Exemption 4 may be distilled into the following four categories:⁵⁰

Category	Descriptions
Call Completion Data	Calls attempted, percentages of calls answered/completed, high and low call answer rates, and Form 480 Reports
RCC Problem/Complaint Response Information	T-Mobile's practices in responding to RCC problems/complaints, training provided to responding employees, internal testing procedures regarding call routing problems, responsibilities of T-Mobile customer response teams, logs regarding four specific customer complaints referenced by the LOI, records regarding grievances and inquiries traced and handled by T-Mobile's Executive Response Team, and documents referencing how T-Mobile uses data to respond to inquiries and complaints
Data Regarding Out of Network Traffic Sent Via SIP Trunks	Percentage of out of network calls sent via trunks using SIP technology from 2013 to 2016, SIP trunk calls taking <i>more than four seconds for call set up</i> and their estimated percentage of total calls attempted in 2016, and the estimated number of such calls in 2016 that were out of network
Names/Identities of Intermediate Providers	Names and identities of T-Mobile's intermediate providers

Requesters address each category below.

2. *Exemption 4 Does Not Apply To The Call Completion Data.*

a. T-Mobile Has Not Shown The Information It Submitted To The Commission Showing The Numbers Of T-Mobile Customer Calls Attempted, Percentages Of Calls Completed, And Call Answer Rates Are Subject To Exemption 4 Protection.

T-Mobile claims the Call Completion Data should be protected from disclosure under Exemption 4's competitive harm prong without providing any specific reason detailing why, or how, disclosure of *historical* call completion data from 2016, and possibly earlier, could cause substantial harm to the competitive position of T-Mobile today.⁵¹ Exemption 4 may only apply if the likelihood of substantial competitive harm exists at the time of the requested disclosure.⁵² Here, it is apparent from the Consent Decree and T-Mobile's FOIA Letter that much of the Call Completion Data submitted to the Commission

⁵⁰ See generally T-Mobile FOIA Letter app.

⁵¹ See *Nat'l Parks*, 498 F.2d at 770.

⁵² For example, in *Biles v. Department of Health and Human Services*, 931 F. Supp. 2d at 226-27, the D.C. District Court noted that, where "data is too stale to cause a likelihood of commercial harm" to the company that originally submitted it to the agency, it is no longer subject to the commercial or financial information exception to FOIA.



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relates to calls that were placed in 2016 or earlier.⁵³ This data is far too stale to be of competitive value today.⁵⁴

T-Mobile also does not explain how disclosure of call answer rate data would reveal a business strategy that competitors could affirmatively use to T-Mobile's detriment.⁵⁵ The calls from which the completion data derives were initiated by T-Mobile's customers and placed to rural phone numbers at the whim, desire, and need of T-Mobile's customers. No competitor could possibly glean, steal, or replicate a proprietary business strategy merely by learning how many T-Mobile customers successfully and unsuccessfully placed calls to rural OCNs in 2016 or earlier.

T-Mobile's only grounds for requesting confidential treatment of the Call Completion Data appears to be a quote from *In re MSNBC*, an FCC Memorandum Opinion and Order applying Exemption 4 to requested outage reports, wherein the FCC stated that "information about networks, equipment deployment, traffic flow, and business strategies would give competitors insights into the [carrier's] business[,] providing a competitive advantage they would not normally have."⁵⁶ *MSNBC* presents a very poor analogy to the Call Completion Data. In *MSNBC*, the outage reports the wireline and wireless carriers successfully claimed were exempt included information about the types of equipment they used, the locations of the equipment, the technical configuration of their networks, and the methods and procedures for dealing with outages.⁵⁷ The outage reports also contained detailed information about the carriers' networks, including the type and location of equipment deployed by the carrier.⁵⁸ Moreover, the Commission only reached this conclusion after already deciding that the disclosure of this level of detailed information had important implications for the national defense,⁵⁹ including the potential that those reports could "facilitate terrorist targeting" by identifying "key points of vulnerability" within the carriers' networks.⁶⁰ The Call Completion Data described by T-Mobile's FOIA Letter seems to only concern the number of calls placed, the numbers and/or OCNs to which the calls were placed, and call answer data. Disclosure of this information will reveal *nothing* about T-Mobile's network, equipment deployment, traffic flow, or business strategies.

MSNBC strongly suggest, though, that the data Requesters seek is of high public interest value. In *MSNBC*, the Commission juxtaposed the outage reports against call completion data, noting:

MSNBC misapprehends the nature of the outage reports when it argues that "[d]ropped cell phone calls, and general frustration with cell phone performance, is frequently at the top of consumer complaints received by the Federal Trade Commission. Consumers have very little way of knowing how reliable their cell phones will be prior to purchase;

⁵³ See Consent Decree, 33 F.C.C.R. at *6, ¶ 10; see also T-Mobile FOIA Letter app. at 3 (referencing "percentages of calls answered/completed ... from April 2016 to December 2016").

⁵⁴ See *Biles*, 931 F. Supp. 2d at 226-27; *Lee*, 923 F. Supp. at 455 (rejecting competitive harm argument because "financial information in question is given for [a period two years previously] and any potential detriment which could be caused by its disclosure would seem likely to have mitigated with the passage of time").

⁵⁵ See *Pub. Citizen Health Research Grp.*, 704 F.2d at 1291 n.30 (explaining that competitive harm must flow from the *affirmative use* of proprietary information by competitors).

⁵⁶ T-Mobile FOIA Letter at 5 (quoting *In re MSNBC Interactive News, LLC*, Memorandum Opinion and Order, 23 FCC Rcd. 14518, 14525-26, ¶ 16 (2008) ("MSNBC")).

⁵⁷ See *MSNBC*, 23 FCC Rcd. at 14526, ¶ 16.

⁵⁸ See *id.*

⁵⁹ See *id.* at 14519, ¶ 3.

⁶⁰ See *id.* at 14523, ¶ 11.



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there is precious little data available concerning mobile network performance. The outage reports will not, contrary to MSNBC's suggestion, provide this type of information. Rather, outage reports, "contain highly technical information on network infrastructure outages" and "***do not contain information on the number of dropped calls and quality of service information*** for consumers of wireless telephone services."⁶¹

This passage strongly suggests the Commission would treat a request for disclosure of Call Completion Data differently than outage reports.⁶²

In sum, T-Mobile fails to provide the Commission with any legal or factual grounds for withholding T-Mobile's historical call completion data, meaning the Commission should release said data to Requesters.

b. T-Mobile Has Not Shown Its Form 480 Reports Are Subject To Exemption 4 Protection.

T-Mobile specifically requests the Commission keep secret the data recorded in the carrier's Form 480 Reports, which contain the same type of Call Completion Data discussed in Section IV(B)(2)(a) above. T-Mobile was required to submit the following data to the Commission on a quarterly basis for each rural and nonrural OCN to which it sent calls: "(1) the OCN; (2) the State, (3) the total number of interstate [and intrastate] call attempts; (4) the number of interstate [and intrastate] call attempts that were answered; and (5) the number of interstate [and intrastate] call attempts that were not answered, reported separately for call attempts signaled as busy, ring no answer or unassigned number."⁶³ T-Mobile's justifications for nondisclosure of its Form 480 Reports are illogical and unsupported.

i. The Commission Contemplated Disclosure Of Form 480 Data Under Certain Circumstances.

When the Commission adopted the Form 480 reporting requirement, it "contemplated case-specific review regarding disclosure of Form 480 filings,"⁶⁴ recognizing that release of these reports would be permitted in certain situations – like the present one – to aid the public in identifying and policing rural call completion problems. In adopting its Form 480 reporting requirements, the Commission noted the "benefits to providing public access to the information in these [Form 480] reports," and that providing the public with access to these reports "would provide an incentive to correct call completion problems, [] deter[] and resolv[e] call blocking, and .. provide valuable data for rural LECs to identify the cause of uncompleted calls."⁶⁵ Thus, while the Commission concluded that carriers "may

⁶¹ *Id.* at 14527-28, ¶ 18 (emphasis added) (footnotes omitted).

⁶² See, e.g., *Teich v. FDA*, 751 F. Supp. 243, 253 (D.D.C. 1990) (finding that disclosure of research data concerning silicone gel breast implants was "unquestionably in the public interest" and outweighed the "marginal commercial benefit" and "negligible competitive harm" the data's disclosure would have on the submitter of the information); see also, e.g., *GC Micro Corp. v. Def. Logistics Agency*, 33 F. 3d 1109, 1115 (9th Cir. 1994) (finding the "strong public interest in favor of disclosure" outweighed a "questionable" showing of "any potential for competitive harm, let alone substantial harm") (emphasis in original).

⁶³ See 47 C.F.R. § 64.2105 (West 2018). A copy of the Form 480 Report T-Mobile was required to submit on a quarterly basis is attached hereto as **Exhibit D**.

⁶⁴ T-Mobile FOIA Letter at 10.

⁶⁵ *First RCC Order*, 28 FCC Rcd. at 16199, ¶ 110.



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request confidential treatment ... *[f]or now,*⁶⁶ it left open the door to disclosure of these reports where necessitated by the public interest and/or where the passage of time made confidential treatment unnecessary.

ii. T-Mobile Has Failed To Justify Nondisclosure Of Form 480.

T-Mobile is correct when it notes that the Commission established a “streamlined process” through which carriers like T-Mobile could request nondisclosure of any Form 480 data submitted by selecting a “checkbox” at the time of submission.⁶⁷ However, T-Mobile’s reliance on this technological tool of convenience as some sort of presumption in favor of nondisclosure is completely unfounded.

In the *Rural Call Completion Order* the Commission noted that, while carriers like T-Mobile “may request confidential treatment of all or portions of the data they submit without filing [a] detailed confidentiality designation” at the time of submission, the burdens that are placed on carriers who want to keep this information confidential change once a party requests access to it.⁶⁸ As the Commission explained:

If the Commission receives a request for, or proposes disclosure of, the information contained in the [Form 480] report, the provider will be notified and *required to make the full showing under section 0.459 as to why confidentiality is warranted.*⁶⁹

Under Section 0.459 of the Commission’s rules, this “full showing” requires the carrier to meet a host of requirements in order to satisfy the Commission’s confidential treatment standard, including, *inter alia*:

- (1) Identif[ying] the specific information for which confidential treatment is sought;
-
- (3) Explain[ing] the degree to which the information is commercial or financial;
- (4) Explain[ing] the degree to which the information concerns a service that is subject to competition; [and]
- (5) Explain[ing] how disclosure of the information could result in substantial competitive harm.⁷⁰

T-Mobile has not met any of these requirements in demanding that the carrier’s Form 480 reports remain confidential.⁷¹

T-Mobile avers that the Form 480 data should remain confidential because “the Form 480 details T-Mobile’s performance in the highly competitive CMRS market” and because the Form 480 “is precisely the type of competitive material Exemption 4 was intended to protect from disclosure.”⁷² Such conclusory statements, without more, fail to prove anything, let alone the likelihood that release of the Form 480 data

⁶⁶ *Id.* at 16199-200, ¶¶ 109-10.

⁶⁷ See T-Mobile FOIA Letter at 10.

⁶⁸ *First RCC Order*, 28 FCC Rcd. at 16199, ¶ 109.

⁶⁹ *Id.* (emphasis added).

⁷⁰ 47 C.F.R. § 0.459(b).

⁷¹ See *supra* Section IV(A)(1).

⁷² See T-Mobile FOIA Letter at 10-11.



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would cause T-Mobile *substantial* competitive harm.⁷³ Indeed, this finding has been routinely borne out in other FOIA cases, where courts have rejected similar conclusory justifications for Exemption 4 protection when no supporting evidence has been submitted.⁷⁴

Moreover, the data reported in T-Mobile's Form 480 reports reflects the carrier's involvement in the CMRS marketplace dating all the way back to February 2014 – a period of time when 4G LTE service was just coming into its own and when the possibility of providing 5G service was not even on the horizon. In the five-plus years since then, communications technology and T-Mobile's business practices and subscriber base have changed and evolved significantly, meaning that anything that may be gleaned from this year's old data is unlikely to provide any useful information upon which T-Mobile's competitors could rely today.

Courts have routinely recognized that "stale information is of little value"⁷⁵ and have found similar data to be "too stale to cause a likelihood of commercial harm."⁷⁶ Given the CMRS industry developments that have occurred since 2014, the passage of time has eliminated any meager "competitive advantage" the Form 480 data might have historically provided to competitors.

Finally, the Commission should not give any weight to T-Mobile's assertion that its Form 480 data cannot be disclosed because the Commission recently determined that such data was "not useful" and eliminated the reporting requirement.⁷⁷ As Requesters have already explained, in determining whether information is protected from disclosure under Exemption 4, the Commission must focus on whether disclosure poses a likelihood that a competitor may make affirmative use of the disclosed information, thereby likely imposing substantial competitive harm on the submitter. The Commission's opinion as to "usefulness" of the requested information is completely irrelevant to the FOIA exemption analysis.

⁷³ Indeed, the latter of these statements does not even relate to competitive harm – even on a conclusory, generalized level.

⁷⁴ See, e.g., *Pub. Citizen Health Research Grp. v. Food & Drug Admin.*, 185 F.3d 898, 906-07 (D.C. Cir. 1999) (finding documents related to investigational new drug application were subject to disclosure under FOIA, notwithstanding application of submitter's claim of competitive injury, since such claim was supported by only conclusory and generalized allegations of harm, such as submitter's assertion that disclosure "would reveal substantial basic research" and "would have substantial commercial value to any company"); *Ctr. for Pub. Integrity*, 234 F. Supp. 3d at 77-78 (finding agency's declarations in support of withholding email communications between government contractor managers and legal counsel under Exemption 4 based on contractor's assertion that such emails were "both legally privileged and confidential business proprietary information" were conclusory and lacked factual detail needed to show exemption was applicable).

⁷⁵ *Payne Enters., Inc. v. United States*, 837 F.2d 486, 494 (D.C. Cir. 1998); *Lee*, 923 F. Supp. at 455.

⁷⁶ See, e.g., *Biles*, 931 F. Supp. at 226-27 (noting that two-year-old Medicare payment data submitted by private insurers was "too stale to cause a likelihood of commercial harm" to competing private insurers because, "although trends from one year to the next might be revealed through release of payment data for sequential years, the fact remains that such trends will ... reveal little about competitive strategies in future years"); *Ctr. for Pub. Integrity v. Dep't of Energy*, 191 F. Supp. 2d 187, 195 (D.D.C. 2002) (rejecting competitive harm claim for amounts offered by unsuccessful bidders seeking to buy government land, because competitors would be "naïve to assume that" the bidders' "business strategies and valuation methodologies remain the same over time in the face of changing market conditions"); *Lee*, 923 F. Supp. at 455.

⁷⁷ See T-Mobile FOIA Letter at 11.



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Regardless of the Commission's uses for the Form 480 data, the data is highly useful to Requesters and the public⁷⁸ in determining the identities of the rural telecommunications companies and consumers that are victims of T-Mobile's illegal practices. For example, by learning which OCNs had higher numbers of "Ring No Answer" calls, these rural carriers could better determine whether they were the targets of T-Mobile's false ringtone insertion practice, and by being able to compare T-Mobile's OCN-by-OCN "Calls Attempted" numbers with their own calling data, these carriers could develop a better understanding as to T-Mobile calls to their customers were not completed. The data would also allow the rural telecommunications companies to compare percentages and rates of call completion in rural OCNs with those in urban OCNs to help investigate whether they are also victims of discriminatory practices.

Thus, in accordance with the procedures adopted in the *Rural Call Completion Order* and codified at Section 0.459 of the Commission's rules, the Commission should reject T-Mobile's flimsy, conclusory, and unsupported claims that its historical Form 480 reports are competitively sensitive, and disclose them to Requesters in their entirety.

3. ***Exemption 4 Does Not Apply To RCC Problem/Complaint Response Information.***

T-Mobile's request for confidential treatment of all documents in the Commission's investigation file related to its response to rural call completion complaints is first undermined by the fact that the Commission has already published many T-Mobile communications that reveal the nature of complaints it received and how T-Mobile's Executive Response Team handled them.⁷⁹ Moreover, the Commission has also previously released similar communications it received from T-Mobile's competitors.⁸⁰ Thus, there is already significant transparency among all of T-Mobile's competitors with regard to how they handle consumer complaints that are brought to the attention of the Commission.

Next, before addressing the deficiencies of the legal authorities T-Mobile relies upon⁸¹ it is important that the Commission takes into account the purpose and function of T-Mobile's Executive Response Team, whose "[i]nternal records regarding grievances and inquiries tracked and handled by T-

⁷⁸ To the extent T-Mobile is using the Commission's statements to insinuate that the data Requesters seek will not be useful in its pursuit of further investigating T-Mobile's rural call completion violations and should therefore inhibit the data's disclosure, such insinuation should be wholly discounted. Requesters' identity and its reasons for making its FOIA request are not part of the FOIA analysis. See *Natl' Archives and Records Admin. v. Favish*, 541 U.S. 157, 172 (2003) ("[A]s a general rule, when documents are within FOIA's disclosure provisions, citizens should not be required to explain why they seek the information."); *id.* at 170 ("As a general rule, withholding information under FOIA cannot be predicated on the identity of the requester.").

⁷⁹ Attached hereto as **Exhibit E** is a sampling of publicly available correspondence sent by T-Mobile's Executive Response Team to the Commission. See also FCC, <https://www.fcc.gov/sites/default/files/foia-carrier-responses-08242017-565-throttling.pdf> (last visited Apr. 11, 2019); National Hispanic Media Coalition, <http://www.nhmc.org/wp-content/uploads/2018/08/NHMC-FOIA-Batch-016-released.pdf> (last visited Apr. 11, 2019); FCC, <https://www.fcc.gov/sites/default/files/foia-carrier-responses-09142017-577-interference.pdf> (last visited Apr. 11, 2019).

⁸⁰ Over 250 pages of publicly available correspondence regarding consumer complaint responses sent by T-Mobile's competitors to the Commission can be found at the same websites as the similar T-Mobile documents. See *supra*. n. 79.

⁸¹ T-Mobile FOIA Letter at 6.



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Mobile" are among the documents T-Mobile requests remain confidential.⁸² According to Marc Sisneros, an Operations Manager for T-Mobile's Executive Response Team:

The Executive Response Team is considered the highest level of customer service and Executive Response Specialists handle escalations received directly from our Senior Officers/Directors as well as complaints filed through government and consumer agencies (i.e., CPUC, FCC, Attorney General's, BBB, Department of Agriculture, etc.). Additionally, Executive Response provides assistance to T-Mobile's Legal Affairs team by serving as a first line of defense in all small claims cases, civil lawsuits (not exceeding \$50,000) and matters filed before the American Arbitration Association. Executive Response is required to balance the business, mitigate risk and seek out unCarrier resolutions on each and every interaction.⁸³

Similarly, a public customer support post from T-Mobile's website refers to this Team as the "highest level of support available."⁸⁴ Art Lucero, the Director of Executive Response Team & Offline Services, writes that the Executive Response Team is in "pursuit of Exceptional Customer Care" and consists of "150+ employees."⁸⁵ It appears this Team would have been on the front line of T-Mobile's investigation of the customer complaints described in Paragraphs 7 through 9 of the Consent Decree, and any other customer complaints about quality.⁸⁶ Furthermore, the Executive Response Team appears to be the division that responds to the Commission with respect to consumer inquiries.⁸⁷ Thus, it is not surprising that T-Mobile wants this Team's records shielded from release. The Commission should look upon T-Mobile's arguments with great skepticism since it is more likely T-Mobile seeks to protect itself from embarrassing and unfavorable criticism, rather than a likely risk of substantial competitive harm.⁸⁸

T-Mobile argues its customer complaint information and processes fall within Exemption 4 by claiming the Commission has held, "that Exemption 4 **forbids** disclosure of information regarding a company's 'relations with its customers, its internal procedures for assuring regulatory compliance, . . . its methods and procedures for responding to customer complaints,' 'its method of dealing with customer satisfaction issues and [its] product development.'"⁸⁹ This is a gross overstatement. *National Association of Broadcasters* does not "forbid" disclosure of information regarding a company's relations with its customers as an across the board principle.⁹⁰ There, Sirius Satellite Radio, Inc. ("Sirius") sought reconsideration of the Bureau's denial of its request for redaction of the text of an answer to an LOI

⁸² T-Mobile FOIA Letter app.

⁸³ Marc Sisneros LinkedIn, <https://www.linkedin.com/in/marc-sisneros-671a68a2/> (last visited Apr. 11, 2019). For marketing purposes, T-Mobile commonly refers to itself as the "unCarrier."

⁸⁴ <https://support.t-mobile.com/thread/143850>

⁸⁵ Art Lucero LinkedIn, <https://www.linkedin.com/in/artlucero87120/> (last visited Apr. 11, 2019).

⁸⁶ See Consent Decree, 33 F.C.C.R. at *5, ¶¶ 7-9; see also IT TAKES ALL KINDS... A BLOG BY MARK ROEHL, *The Never Ending Story – Why T-Mobile is Horrible* (Oct. 28, 2012), available at <https://takesallkinds.wordpress.com/2012/10/> (blog post by T-Mobile subscriber detailing how a move from Ohio to West Virginia affected his level of service and detailing how T-Mobile, through its Executive Response Team, responded to his complaint) (last visited Apr. 11, 2019).

⁸⁷ See *supra* n. 78.

⁸⁸ See *infra* n. 40.

⁸⁹ T-Mobile FOIA Letter at 7 (emphasis added) (citing *In re Nat'l Ass'n of Broadcasters*, Memorandum Opinion and Order, 24 FCC Rcd. 12320, 12329, ¶ 20 (2009) ("Nat'l Ass'n of Broadcasters")).

⁹⁰ See *Nat'l Ass'n of Broadcasters*, 24 FCC Rcd at 12329, ¶ 20.



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question which the Commission issued in the course of an investigation.⁹¹ Sirius claimed the unredacted response “gave a direct view” into Sirius’ corporate structure and processes, detailed information about specific products, “as well as relations with its customers,” internal procedures for assuring regulatory compliance, and, “its methods and procedures for responding to customer complaints.”⁹² It appears from this opinion that the information about Sirius’ customer relations practices and responses to customer complaints was comingled, in the text of Sirius’ response to LOI Question 9, with other information about product development, corporate structure and processes and internal processes for regulatory compliance.⁹³ The Commission granted Sirius’ request for redaction of the foregoing information because the Bureau had found other portions of the LOI response involving product development and business strategies would result in competitive harm, so the same logic should have protected these passages in Sirius’ response to LOI Question 9.⁹⁴ The portion of *National Association of Broadcasters* relied upon by T-Mobile does not include any analysis or discussion regarding why or whether consumer relations information may be subject to Exemption 4, and says nothing about “forbidding” disclosure of such information.⁹⁵

Further, T-Mobile’s request is very different from that of Sirius. While Sirius sought redaction of a portion of text offered in response to an LOI question, here T-Mobile seeks non-disclosure of an entire category of business records related to how it received and dealt with the customer and rural LEC complaints that sparked the Commission’s rural call completion investigation of T-Mobile. In that regard, *National Association of Broadcasters* illustrates why the Commission should **deny** T-Mobile’s confidentiality requests. In that case XM Radio, Inc. (“XM”) also sought reconsideration of the Bureau’s release of four documents it claimed revealed insights into, “its organization processes, how it became aware of potential non-compliance, **how it reacted**, and how the potential non-compliance affected its business processes and strategies.”⁹⁶ The Commission denied XM’s request for reconsideration because, like T-Mobile here, it failed to meet its *National Parks* burden, stating:

XM’s general statements fail to provide a detailed description of precisely what portions of the four documents constitute material the disclosure of which would cause competitive harm. Unlike Sirius, which provided very specific indications of what sections and lines of their LOI Responses should have been treated as confidential and redacted by the Bureau, XM did not do so. Without greater specificity, we are unable to determine which language XM believes would cause competitive harm if disclosed.⁹⁷

The same analytical reasoning applied here mandates a conclusion that T-Mobile’s generalized prediction of competitive harm flowing from disclosure of information about the Executive Response Team’s processes for responding to rural call completion quality complaints, and its actual responses to the complaints that led to the Consent Decree, is not deserving of Exemption 4 protection.⁹⁸

⁹¹ See *id.*

⁹² See *id.*

⁹³ See *id.*

⁹⁴ See *id.*

⁹⁵ See generally *id.* Requesters acknowledge that it may be appropriate for the Commission to redact some personal identifying information related to T-Mobile’s customers from these documents.

⁹⁶ *Id.* at 12330, ¶ 21 (emphasis added).

⁹⁷ *Id.* at 12329, ¶ 21 (citations omitted).

⁹⁸ T-Mobile also cited *Public Citizen v. United States Department of Health and Human Services*, 975 F. Supp. 2d 81, 105 (D.D.C. 2013), in support of its claim that “Exemption 4 precludes disclosure of information about ‘internal processes’ by which a company ‘make[s] decisions about managing and conducting [its] business operations.’” See



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4. *Exemption 4 Does Not Apply To Data Regarding Out Of Network Traffic Sent Via Trunks Using SIP Technology.*

Notably absent from T-Mobile's FOIA Letter is any express request for confidential treatment of the evidence of its illegal practice of inserting false ring tones into over 100,000,000 calls destined for rural OCNs.⁹⁹ All of this evidence should be produced. Since inserting false ring tones was codified as an illegal practice as of January 1, 2014,¹⁰⁰ the evidence T-Mobile produced to the Commission revealing its use of this illegal practice can be of no competitive value, as T-Mobile's competitors are prohibited by law from putting the same tactics into use.¹⁰¹ The D.C. District Court recently acknowledged that "Exemption 4 cannot be used to shield illegal business practices under the guise of confidential business information."¹⁰² Although in that case the Court found that principle not applicable because the business practice in question "would have been legal but for Sandia's improper use of government funds to develop and execute that strategy,"¹⁰³ here, there is no circumstance under which evidence of T-Mobile's false ring tone strategy could be put into use by a competitor legally.¹⁰⁴ Moreover, the Consent Decree includes an express admission by T-Mobile that it, "violated Section 64.2201's prohibition against the insertion of false ring tones."¹⁰⁵ Thus, this case presents the unique circumstance where Exemption 4 should not apply to the false ring tone information in the file, since, as a matter of law, no competitor would be entitled to put T-Mobile's proprietary, but illegal, practice into use.¹⁰⁶

It seems T-Mobile may have been trying to mask its request for confidentiality of the false ring tone information by instead requesting confidential treatment of the "Traffic Sent Via Trunks Using SIP Technology Data." The Consent Decree states, in reference to T-Mobile's use of false ring tones:

T-Mobile FOIA Letter at 7 n.27. However, following this passage the court in *Public Citizen* goes on to conclude that such information is "commercial information" subject to Exemption 4. See *Pub. Citizen*, 975 F. Supp. 2d at 105. The court does not hold that such information, in every circumstance, satisfies the *National Parks* test, which is at issue here. Furthermore, T-Mobile's reliance on *Butler v. United States Department of Labor*, 316 F. Supp. 3d 330, 335 (D.D.C. 2018), in support of nondisclosure of training information related to consumer complaint response methods is similarly unpersuasive. See T-Mobile FOIA Letter at 7 n.28. In *Butler*, the requester sought information about an industrial energy facility's "Lockout/Tagout Procedures" following the death of her spouse in a workplace fire incident. *Butler*, 316 F. Supp. 3d at 335. The CEO of the submitting energy company supported its competitive harm argument with a declaration outlining four specific ways in which disclosure of such information posed a likely risk of substantial competitive harm. *Id.* Here, however, no such detailed information has been provided by T-Mobile. *Butler* can also be distinguished from the present situation because that case in no way related to the disclosure of training materials. Indeed, the analysis T-Mobile cites in *Butler* focused on when industrial equipment went in and out of service, which relates to confidential facilities operations and strategies concerning downtime and equipment utilization, which the requester conceded were competitively sensitive. *Id.* *Butler* does not in any way support T-Mobile's contention that a company's methods for dealing with customer complaints are automatically protected by Exemption 4 with no supporting evidence.

⁹⁹ See Consent Decree, 33 F.C.C.R. at *6, ¶ 11.

¹⁰⁰ 47 C.F.R. § 64.2201.

¹⁰¹ *Pub. Citizen Health Research Grp.*, 704 F.2d at 1291 n.30 (explaining that, for purposes of the court's Exemption 4 analysis, competitive harm is limited to situations where the harm will flow from the affirmative use of proprietary information of a competitor).

¹⁰² *Ctr. For Pub. Integrity*, 234 F. Supp. 3d at 76.

¹⁰³ *Id.*

¹⁰⁴ See 47 C.F.R. § 64.2201.

¹⁰⁵ See Consent Decree, 33 F.C.C.R. at *7, ¶ 17.

¹⁰⁶ *Pub. Citizen Health Research Grp.*, 704 F.2d at 1291 n.30; *Ctr. for Pub. Integrity*, 234 F. Supp. 3d at 76.



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Because T-Mobile applied this practice to out-of-network calls from its customers ***on SIP routes that took more than a certain amount of time*** on a nationwide basis and without regard to time of day, the [false ring tone] was likely injected into hundreds of millions of calls each year.¹⁰⁷

T-Mobile's FOIA Letter uses similar rhetoric, requesting confidentiality over the following category of information it produced during its final submission to the EB:

Estimated number of out-of-network calls attempted by T-Mobile customers sent via trunks using SIP technology in 2016 taking ***more than four seconds for call setup***.¹⁰⁸

The reference to calls taking "more than four seconds for call setup" strongly fits the pattern of calls taking too long to connect or not connecting at all, which more than likely would have triggered a false ring tone insertion by T-Mobile. Thus, it appears T-Mobile is requesting confidential treatment of the false ring tone information, albeit in an obfuscated way. Under no circumstance should the information reflecting why, when, how, and how many times T-Mobile illegally inserted false ring tones into calls placed to rural OCNs be afforded confidential treatment.

T-Mobile ignores the illegality of its false ring tone business strategy and instead asserts that confidentiality is warranted in order to keep secret the pace at which T-Mobile has migrated to SIP technology.¹⁰⁹ Once again, this conclusory prediction of competitive harm is backed by no facts and defies logic. There is no reason to expect that the Commission's file contains competitively-sensitive information about T-Mobile's strategic deployment of SIP technology. Indeed, the use of SIP technology is hardly a secret in the telecommunications industry. According to T-Mobile in 2013, "Internet Protocol (IP) is the technology used by virtually every telecommunications company today."¹¹⁰ Indeed, T-Mobile has called on the Commission to mandate public disclosure of points of interconnection where IP traffic could be exchanged between carriers.¹¹¹ To the extent that the documents in the EB's file include information regarding T-Mobile's network configuration and/or equipment used to exchange traffic in SIP, this information would provide T-Mobile's competitors with no substantial – let alone minimal – competitive advantage, as the entire industry has been moving to SIP technology in accordance with the Commission's stated policy objectives.

In sum, T-Mobile has not met its burden of demonstrating that the false ring tone information it submitted to the Commission should receive confidential treatment. The public's interest in disclosure of such information is strong and must be favored.

¹⁰⁷ Consent Decree, 33 F.C.C.R. at *6, ¶ 11 (emphasis added).

¹⁰⁸ T-Mobile FOIA Letter app (emphasis added).

¹⁰⁹ See T-Mobile FOIA Letter at 6.

¹¹⁰ T-MOBILE, *Transition to IP Technology Requires Some Oversight* (Mar. 28, 2013), available at <https://www.t-mobile.com/news/transition-to-ip-technology-requires-some-oversight>.

¹¹¹ *Id.*; see also *In the Matter of Connect America Fund et al.*, WC Docket Nos. 10-90, 01-92, Reply Comments of T-Mobile USA, Inc. at 12-13 (Nov. 20, 2017) (asserting that establishing and identifying points of interconnection for the exchange of IP traffic would "improve call quality problems").



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5. *Exemption 4 Does Not Apply To Identities Of Intermediate Providers.*

As indicated above, Exemption 4 cannot apply to the identity of T-Mobile's intermediate providers because that information is already public.¹¹² T-Mobile's confidentiality request in this regard is completely frivolous.

V. T-MOBILE HAS NOT SHOWN ALL PERSONAL INFORMATION REGARDING T-MOBILE CUSTOMERS, EMPLOYEES, AND AGENTS ARE SUBJECT TO EXEMPTION 6 [REBUTTAL TO SECTION I(B)].

Continuing with its theme of broad, unsubstantiated objections, T-Mobile also avers that disclosing the various documents Requesters seek would violate FOIA's Exemption 6, which, T-Mobile claims, "precludes disclosure of the names and telephone numbers of T-Mobile's customers, employees, and agents[,] ... the disclosure of which would constitute a clearly unwarranted invasion of personal privacy."¹¹³ T-Mobile does not, however, defeat "the presumption in favor of disclosure" that must be applied to any Exemption 6 analysis,¹¹⁴ because it fails to offer any explanation as to how disclosure of these names and telephone numbers would create such an unwarranted privacy invasion.

A. The Names And Telephone Numbers of T-Mobile's Employees And Agents That Appear In The Requested File Should Be Released.

Exemption 6 only protects from disclosure personnel, medical, and similar files that, if disclosed, "would compromise a *substantial*, as opposed to *de minimis*, privacy interest."¹¹⁵ and while some information about individuals meet these requirements, the mere names and work phone numbers of T-Mobile's employees or third-party agents referenced in the requested file do not.

To begin, Requesters note that in no way have they asked for, nor should the file related to the Consent Decree contain, the personnel or medical files of T-Mobile's employees or its third-party agents. Rather, employee information within the requested file – such as communications that may be signed by or addressed to a T-Mobile employee/agent – should only be incidental to the business records T-Mobile submitted to the Commission. Documents of this nature are not "personnel files" protected by Exemption 6.¹¹⁶ Moreover, numerous courts have also determined that such documents do not constitute "similar files."¹¹⁷

¹¹² See *supra* Section III.

¹¹³ T-Mobile FOIA Letter at 8.

¹¹⁴ *Multi Ag Media LLC v. Dep't of Agric.*, 515 F.3d 1224, 1227 (D.C. Cir. 2008).

¹¹⁵ *Id.* at 1229.

¹¹⁶ See, e.g., *Aguirre v. SEC*, 551 F. Supp. 2d 33, 54 (D.D.C. 2008) ("Correspondence does not become personal solely because it identifies [] employees."); *Gordon v. FBI*, 390 F. Supp. 2d 897, 902 (N.D. Cal. 2004) (concluding that Exemption 6 does not apply to the names of agency's "lower-level" employees, and likewise opining that "[t]he [agency] still has not demonstrated that an employee's name alone makes a document a personnel, medical or 'similar file'").

¹¹⁷ See, e.g., *Leadership Conf. on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 256-57 (D.D.C. 2005) (holding that "the names and work telephone numbers" of government employees did not fall under the "similar files" category after finding that "[a] name and work telephone number is not personal or intimate information, such as a home address or a social security number, that normally would be considered protected information under FOIA Exemption 6"); see also *Gordon*, 390 F. Supp. at 902; *Yonemoto v. Dep't of Veterans Affairs*, CIV No. 06-00378



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But even if the requested file contains documents that may be considered “personnel files” or “similar files,” T-Mobile nevertheless has done nothing to explain how disclosure of the employee information therein would compromise a substantial privacy interest or result in an unwarranted invasion of privacy. Indeed, courts have found that an individual’s expectation of privacy is diminished with regard to matters in which he or she is acting in a business capacity.¹¹⁸ And, generally, where only an employee’s/agent’s name, title, or work phone number is at issue, courts conclude that the information should be disclosed due to the minuscule invasion of privacy such disclosure would cause.¹¹⁹ For all of these reasons, the names and work phone numbers of T-Mobile’s employees and third-party agents that appear within the requested file need not be redacted and should be released, especially since T-Mobile has failed to illustrate anything more than a conclusory, ambiguous and minuscule privacy interest.

B. Requesters Acknowledge That The Names And Telephone Numbers Of T-Mobile’s Customers May Warrant Redactions.

Requesters surmise from the Consent Decree, that the T-Mobile customer information it requests not be disclosed is that which was included in its response to the Commission’s LOI for the “details of any complaints T-Mobile received in 2016 regarding problems with T-Mobile customer calls completing to rural areas that the Company had received from sources independent of the Commission.”¹²⁰ For example, the Consent Decree notes that T-Mobile’s submissions revealed 71 customer complaints about problems with calls completing between June 9, 2016, and October 5, 2016, to one of the Wisconsin LECs that had filed complaints directly with the Commission.¹²¹ Information about these types of customer complaints should be released due to its overwhelming benefits to the public generally and specifically to those rural carriers and millions of Americans who were harmed by T-Mobile’s illicit practices. However, Requesters acknowledge that it is likely appropriate for the Commission to redact some personal identifying information of the T-Mobile customers that may be referenced in those complaints.

¹¹⁸ BMK, 2007 WL 1310165, at *2 (D. Haw. May 2, 2007) (stating that “records are not “similar files” when they have “an essentially business nature” or pertain to business relationships).

¹¹⁹ See, e.g. *Wash. Post Co. v. Dep’t of Agric.*, 943 F. Supp. 31, 34-36 (D.D.C. 1996) (finding that farmers who received subsidies under cotton price-support program have only minimal privacy interests in home addresses from which they also operate businesses and that addresses could therefore be disclosed pursuant to FOIA request); *Ackerson & Bishop Chartered v. Dep’t of Agric.*, No. 92-1068, slip op. at 1 (D.D.C. July 15, 1992) (concluding that commercial mushroom growers operating under individual names have no expectation of privacy); *W. Watersheds Project v. Bureau of Land Mgmt.*, No. CV 09-482-CWD, 2010 WL 3735710, at **8-10 (D. Idaho Sept. 13, 2010) (finding that business entities “listed under a personal name” have only a “minimal” privacy interest in the disclosure of their names and/or addresses).

¹²⁰ *Calderon v. Dep’t of Agric.*, 236 F. Supp. 3d 96, 120-21 (D.D.C. 2017) (holding that “there is no significant privacy interest in [employees’] names or business addresses,” such that this information could not be protected under Exemption 6); *Hersh & Hersh v. Dep’t of Health & Human Servs.*, No. C 06-4234 PJH, 2008 WL 901539, at *8 (N.D. Cal. Mar. 31, 2008) (finding that business addresses, phone numbers, and job titles of corporate employees do not implicate the same type of heightened concerns as other personal information and could therefore be released).

¹²¹ *Id.* at *6, ¶ 12 n.27.



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VI. T-MOBILE HAS NOT SHOWN THE “SETTLEMENT-RELATED DOCUMENTS” ARE EXEMPT.

A. The Settlement Related Documents Are Part of the EB Investigation File Requested.

T-Mobile charges, in a footnote, without authoritative support, that settlement discussions and related materials do not “fall within the scope of the FOIA request.”¹²² T-Mobile fails to describe what “Settlement-Related Documents” include, putting Requesters at the distinct disadvantage of attempting to rebut a claim of confidentiality over an ambiguous category of documents.¹²³ However, T-Mobile’s rhetoric suggests that there may be additional evidentiary documents it provided to the Commission in the course of their settlement discussions. Such evidentiary documents should certainly be considered part of the file requested. Moreover, “[t]he government is obligated to construe FOIA requests . . . liberally, where a request is ‘reasonably susceptible to the broader reading.’”¹²⁴ This Request seeks “all documents in the File No. EB-IHD-16-00023247,” and is reasonably susceptible to a reading in which settlement-related documents fall under the ambit of “all documents in the File No. EB-IHD-16-00023247.” Therefore, even if T-Mobile’s tortured and narrow reading of the request is a reasonable one, the Commission must accept the Requesters’ broader reading as covering all documents tendered to the EB by T-Mobile at every stage of the Commission’s investigation, including the resolution of it.

B. Settlement Related Documents May Only Be Withheld If They Are Independently Subject To A FOIA Exemption.

1. *The FCC May Not Withhold The “Settlement-Related Documents” Under FOIA Exemption 5 Because No Federal Settlement Privilege Exists.*

FOIA Exemption 5 generally exempts from disclosure “inter-agency or intra-agency memorandums or letters that would not be available by law to a party other than an agency in litigation with the agency.”¹²⁵ Courts have construed FOIA Exemption 5 to cover “those documents, and only those documents, normally privileged in the civil discovery context.”¹²⁶

On no less than six occasions, the D.C. District Court has rejected an across-the-board settlement privilege under FOIA Exemption 5 that would permit an agency to withhold all documents related to settlement.¹²⁷ As that court has repeatedly explained, Congress made clear through Federal

¹²² T-Mobile FOIA Letter at 2 n.3; *see also generally id.* Section I(C).

¹²³ See *Cuneo*, 484 F.2d at 1091 (noting that where the party seeking disclosure does not know the contents of the information sought, he cannot argue as effectively that the documents sought contain information to which he is entitled access).

¹²⁴ *Stein v. SEC*, 266 F. Supp. 3d 326, 336 (D.D.C. 2017) (quoting *LaCedra v. Exec. Office for U.S. Attorneys*, 317 F.3d 345, 347-48 (D.C. Cir. 2003)).

¹²⁵ 5 U.S.C. § 552(b)(5).

¹²⁶ *Phila. Newspapers, Inc. v. Dep’t of Health & Human Servs.*, 69 F. Supp. 2d 63, 67 (D.D.C. 1999) (quoting *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 149 (1975)).

¹²⁷ See *Elec. Privacy Info. Ctr. v. Dep’t of Homeland Security*, 999 F. Supp. 2d 61, 78 (D.D.C. 2013); *COMPTEL II*, 945 F. Supp. 2d at 58; *COMPTEL v. FCC*, 910 F. Supp. 2d at 117 (“COMPTEL I”); *In re Subpoena Issued to Commodity Futures Trading Comm’n*, 370 F. Supp. 2d 201, 212 (D.D.C. 2005), *aff’d sub nom.* on other grounds by *In re Subpoena Duces Tecum Issued to Commodity Futures Trading Comm’n WD Energy Servs. Inc.*, 439 F.3d 740 (D.C. Cir. 2006); *NAACP Legal Def. & Educ. Fund v. Dep’t of Justice*, 612 F. Supp. 1143, 1146 (D.D.C. 1985); *Ctr. for Auto Safety v. Dep’t of Justice*, 576 F. Supp. 739, 751, 753 (D.D.C. 1983), *vacated in part on other grounds by* No. 82-0714, 1983 WL 1955, at *1 (D.C. Cir. July 7, 1983).



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Rule of Evidence 408 that it “chose to promote” the settlement of disputes “through limits on the *admissibility* of settlement material rather than limits on their *discoverability*.¹²⁸

Rather than cite this line of cases or discuss Congress’s intent, T-Mobile points to the Commission’s *COMPTEL* decision.¹²⁹ T-Mobile fails to mention, though, that the requestor in *COMPTEL* later sued the Commission, and the D.C. District Court twice rejected the Commission’s attempt (albeit under FOIA Exemption 4) to redact information “solely because it relates to settlement.”¹³⁰

Consistent with the decisions by the D.C. District Court, the Commission cannot withhold documents under FOIA Exemption 5 based on a federal settlement privilege, because no such privilege exists.

2. *The FCC May Not Withhold the “Settlement-Related Documents” Under FOIA Exemption 7(A) Because They Do Not Involve An Ongoing Investigation.*

FOIA Exemption 7(A) “protects from disclosure certain ‘records or information compiled for law enforcement purposes.’¹³¹ This includes records whose release ‘could reasonably be expected to interfere with enforcement proceedings.’¹³²

That said, FOIA Exemption 7(A) “applies only to future proceedings in an *ongoing* investigation.”¹³³ In 1999, the D.C. District Court reaffirmed an apt decision that illustrates this principle:

Judge Hogan rejected an agency’s use of Exemption 7(A) to withhold documents relating to a consent decree, namely “draft settlement agreements, internal memoranda and notes discussing those agreements, and correspondence between the agency and its adversary with respect to consent decree negotiations,” because the agency “had not met its burden of showing that the documents were collected or are being used in an ongoing investigation.”¹³⁴

Here, the EB completed its investigation of T-Mobile and the Commission has published the Consent Decree. As a result, disclosure of the “Settlement-Related Documents” would not interfere in any ongoing investigation and the Commission cannot withhold these documents under Exemption 7(A).

Nor does Exemption 7(E), which protects from disclosures documents containing “records or information compiled for law enforcement purposes,’ including records whose release . . . ‘would disclose techniques and procedures for law enforcement investigations or prosecutions’ that “could reasonably be expected to risk circumvention of the law,” apply to the Settlement-Related Documents Exemption.¹³⁵

¹²⁸ *In re Subpoena Issued to Commodity Futures Trading Comm’n*, 370 F. Supp. 2d at 212 (citing *NAACP Legal Def. & Educ. Fund v. Dep’t of Justice*, 612 F. Supp. at 1146; *Ctr. for Auto Safety*, 576 F. Supp. at 753).

¹²⁹ See T-Mobile FOIA Letter at 9 n.38 (citing *In re COMPTEL*, 27 FCC Rcd. 7705, 7712, ¶ 17 (2012)).

¹³⁰ *COMPTEL II*, 945 F. Supp. 2d at 58 (quoting *COMPTEL I*, 910 F. Supp. 2d at 117).

¹³¹ 5 U.S.C. § 552(b)(7)(A).

¹³² *Id.*

¹³³ *Phila. Newspapers, Inc. v. HHS*, 69 F. Supp. 2d at 67.

¹³⁴ *Id.* (quoting *Ctr. for Auto Safety*, 576 F. Supp. at 751, 753).

¹³⁵ 5 U.S.C. § 552(b)(7)(E); see also *Pub. Emps. for Env’tl Responsibility v. U.S. Section, Int’l Boundary & Water Comm’n, U.S.-Mexico*, 740 F.3d 195, 204 n.4 (D.C. Cir. 2014) (recognizing that the D.C. Circuit “has applied the



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Document descriptions “couched in conclusory and unspecific language” are “hardly sufficient” to justify application of Exemption 7(E).¹³⁶ For example, the DEA failed to justify withholding documents pursuant to Exemption 7(E) when it stated ‘merely that Section 7(E) was used to exempt ‘one surveillance technique’ . . . which is ‘frequently used to obtain corroborative evidence,’ as well as ‘circumstances, purposes, and methods employed by DEA’ and ‘information about, results of, or descriptions of the technique.’”¹³⁷ T-Mobile’s blanket claim that release of settlement-related documents would “disclose techniques and procedures utilized to settle EB investigations”¹³⁸ should fare no better.

In sum, an agency must provide a specific, independent basis for withholding settlement-documents in response to a FOIA request. The bases T-Mobile provides are neither specific nor independent of the fact of settlement and thus, are of no use to the Commission.

VII. CONCLUSION.

T-Mobile has not provided the Commission with any evidence to back up its assertions that the requested material, if released, is likely to cause substantial competitive harm. T-Mobile concedes it does not want Requesters to access the evidence of their grossly fraudulent and illegal conduct for fear of negative press, public embarrassment, competitors flouting T-Mobile’s wrongs, and the prospect of litigation brought by the victims of its illegal practices who were not compensated in any way by the \$40,000,000 fine the carrier paid to the Commission. The extent and breadth of T-Mobile’s intentional, illegal practices, which affected over 100,000,000 calls one year alone, weigh heavily in favor of public disclosure of this file.

Should you have any questions regarding the Request or this response, please do not hesitate to contact us.

Sincerely,

Womble Bond Dickinson (US) LLP

G. David Carter
Cathy A. Hinger
Partner

cc: Jocelyn Frye (jocelyn.frye@fcc.gov)
Alex Espinoza (Alex.Espinoza@fcc.gov)
Russell P. Hanser (rhanser@wklaw.com)
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¹³⁶ ‘risk circumvention of the law’ requirement both to records containing guidelines and to records containing techniques and procedures”).

¹³⁷ *Linn v. Dep’t of Justice*, Civ. A. No. 92-1406, 1995 WL 417810, at *12 (D.D.C. June 6, 1995).

¹³⁸ *Id.*

¹³⁸ T-Mobile FOIA Letter at 9.

EXHIBIT A

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549**

FORM 8-K

**CURRENT REPORT
Pursuant to Section 13 or 15(d)
of the Securities Exchange Act of 1934**

Date of Report (Date of earliest event reported): August 13, 2015

**INTELIQUENT, INC.
(Exact name of registrant as specified in its charter)**

Delaware
(State or other jurisdiction
of incorporation)

001-33778
(Commission
File Number)

31-1786871
(IRS Employer
Identification No.)

**550 West Adams Street
9th Floor
Chicago, Illinois 60661**
(Address of principal executive offices, including Zip Code)

(312) 384-8000
(Registrant's telephone number, including area code)

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 1.01. Entry into a Material Definitive Agreement.

On August 17, 2015, Inteliquent, Inc. (the “Company”) announced that it had entered into a three-year Telecom Master Services Agreement (the “Master Agreement”) and a related services agreement (the “PSTN Agreement”) with T-Mobile US, Inc. (“T-Mobile”), under which the Company expects to provide a range of services to carry local, long distance and toll-free voice traffic between T-Mobile’s network and the public switched telephone network (“PSTN”). T-Mobile accepted the services provided under the PSTN Agreement on August 13, 2015.

The PSTN Agreement provides that T-Mobile will generally use Inteliquent as its sole provider of voice interconnection services for all calls exchanged between T-Mobile and nearly all other voice providers in the United States (excluding certain traffic, including among other things, traffic that is exchanged with other providers over peering arrangements, etc.). Accordingly, the Company expects the PSTN Agreement to result in a significant increase in the volume of traffic that it carries on its network.

Both the Company and T-Mobile have the right to terminate the Master Agreement or any related services agreement in certain circumstances. The Company’s termination rights with respect to the Master Agreement arise upon (i) the occurrence of an uncured material breach by T-Mobile or (ii) a change in applicable laws that has had or will have a material adverse effect on (a) the Company under the Master Agreement or (b) the Company’s ability to provide services under the Master Agreement. T-Mobile may terminate the Master Agreement or any related services agreement, each in whole or in part, upon (i) the occurrence of an uncured material breach by the Company; (ii) a material adverse change to the Company, including the Company becoming insolvent, the Company taking steps toward a bankruptcy filing, the Company losing a major customer, the Company’s Moody’s or S&P credit ratings falling below certain thresholds; the Company entering into contracts outside of the ordinary course of business (such as related to the nonpayment of debts, disposal of assets, or restructuring) or the Company becoming the subject of a formal investigation by a governmental authority or substantive legal proceedings being initiated against the Company by a governmental authority; (iii) proposed changes in applicable laws that have or will have a material adverse effect on T-Mobile’s use of the services provided by the Company; (iv) a transaction resulting in a change in control of the Company either (a) with a direct competitor of T-Mobile or (b) that results in a material degradation of the services provided by the Company; and (v) a force majeure event that continues beyond a designated period. In the event of a material breach by the Company, in addition to its right to terminate the Master Agreement and any related service agreement, T-Mobile is entitled to all other remedies available to it at law or in equity, including, without limitation, monetary damages and equitable injunctive relief, including specific performance and injunctive relief, under any applicable laws.

Item 7.01. Regulation FD Disclosure.

Also on August 17, 2015, the Company revised upward certain of the Company’s financial estimates for the full year 2015 in the press release announcing the Master Agreement and PSTN Agreement. A copy of the press release is attached hereto as Exhibit 99.1 and is incorporated herein by reference.

The information, including Exhibit 99.1, furnished in this Item 7.01 is not deemed “filed” for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, or otherwise subject to the liabilities of that section. Registration statements or other documents filed with the Securities and Exchange Commission shall not incorporate this information by reference, except as otherwise expressly stated in such filing.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

<u>Exhibit No.</u>	<u>Description</u>
99.1	Press release issued August 17, 2015.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

INTELIQUENT, INC.

/s/ Richard L. Monto

Date: August 18, 2015

Name: Richard L. Monto

Title: General Counsel, Senior Vice President and Corporate
Secretary

EXHIBIT INDEX

<u>Exhibit No.</u>	<u>Description</u>
99.1	Press release issued August 17, 2015.

EXHIBIT B



NEWS & MEDIA

INTELIQUENT ANNOUNCES ENTRY INTO BREAKTHROUGH AGREEMENT

August 17, 2015

CHICAGO, Aug. 17, 2015 (GLOBE NEWSWIRE) -- Inteliquest, Inc. (Nasdaq:IQNT), the carrier for communication service providers, announced that it had entered into a three-year agreement with T-Mobile US, Inc. (NYSE:TMUS), America's fastest growing wireless company, under which Inteliquest will provide a full suite of IP voice services to T-Mobile (the "PSTN Agreement").

The agreement provides that T-Mobile will generally use Inteliquest as its sole provider of voice interconnection services for all calls exchanged between T-Mobile and nearly all other voice providers in the United

States (excluding certain traffic, including among other things, traffic that is exchanged with other providers over peering arrangements, etc.). The agreement also includes Inteliquent's "Infrastructure as a Solution" offering. This offering allows a customer to remove its time division multiplexing (TDM) interconnection from its network and use IP/SIP interconnection for voice services. Inteliquent expects that the agreement will result in a significant increase in the volume of traffic carried on Inteliquent's network.

"We are thrilled to enter into this new agreement with T-Mobile" said John Bullock, Chief Technology Officer of Inteliquent. "In addition, our new 'Infrastructure as a Solution' offering opens up an entire new market for us to serve. Historically, we have been the leading provider of connectivity between wireless and other competitive carriers but not from those carriers to the incumbent local exchange carriers. Going forward, our Infrastructure as a Solution offering allows us to serve the enormous amount of traffic that is originated and terminated to legacy landline networks from wireless and other competitive carriers. We believe that billions of minutes of additional traffic may become addressable with this service and that others will be drawn to such an offering - one that may be a challenge to replicate due to our superior quality of service, customer care and scale."

2015 Business Outlook

Inteliquent expects that the agreement will result in a significant increase in the volume of traffic carried on Inteliquent's network. In order to support the expected additional traffic, Inteliquent has increased its capital expenditures and revised its 2015 Business Outlook as described below:

	Current Estimates	Prior Estimates
Revenue	\$240 to \$250 million	\$220 to \$230 million
Adjusted EBITDA*	\$77 to \$81 million	\$77 to \$81 million
Capital Expenditures	\$22 to \$27 million	\$11 to \$13 million

*Adjusted EBITDA (a non-GAAP financial measure). See "Use of Non-GAAP Financial Measures" below for a discussion of the presentation of Adjusted EBITDA.

The revised 2015 financial estimates include increased capital equipment, transport facilities and other costs required to accommodate the significant additional traffic Inteliquent expects to carry as a result of this agreement. Similar to typical outsourcing arrangements, Inteliquent believes this agreement has financial characteristics that include significant onboarding costs in the first portion of the contract, but with committed revenue and higher profitability potential in the later portion of the agreement. As Inteliquent has successfully done with its core business, Inteliquent will be focused

on optimizing the costs associated with the additional traffic Inteliquent carries under this agreement. The substantially higher volume of traffic should offer enhanced economies of scale over the term of the agreement.

Cautionary Statement Regarding Forward-Looking Statements

This press release contains "forward-looking statements" that involve substantial risks and uncertainties. All statements, other than statements of historical fact, included in this press release are forward-looking statements. The words "anticipates," "believes," "efforts," "expects," "estimates," "projects," "proposed," "plans," "intends," "may," "will," "would," and similar expressions are intended to identify forward-looking statements, although not all forward-looking statements contain these identifying words. Actual results or events could differ materially from the plans, intentions and expectations disclosed in the forward-looking statements we make. Factors that might cause such differences include, but are not limited to: our ability to market and provide our Infrastructure as a Solution offering; our ability to perform under the PSTN Agreement, including the risk that the traffic we carry under the PSTN Agreement will not meet our targets for profitability, including EBITDA and Adjusted EBITDA, that we incur damages or similar costs if we fail to meet certain terms in the PSTN Agreement, or that T-Mobile terminates the PSTN Agreement; the risk that our costs to perform under the PSTN Agreement will be higher than we expect; our ability to optimize the traffic we carry under the PSTN Agreement; the impact of current and future regulation, including intercarrier compensation reform enacted by the Federal Communications Commission on the PSTN Agreement; the effects of competition, including direct connects, and downward pricing pressure

resulting from such competition; our regular review of strategic alternatives; the impact of current and future regulation, including intercarrier compensation reform enacted by the Federal Communications Commission; the risks associated with our ability to successfully develop and market new voice services, many of which are beyond our control and all of which could delay or negatively affect our ability to offer or market new voice services; the ability to develop and provide other new services; technological developments; the ability to obtain and protect intellectual property rights; the impact of current or future litigation; the potential impact of any future acquisitions, mergers or divestitures; natural or man-made disasters; the ability to attract, develop and retain executives and other qualified employees; changes in general economic or market conditions; matters arising out of or related to the impairment charge and financial forecasting practices that were the subject of an investigation by the Company's Audit Committee; and other important factors included in our reports filed with the Securities and Exchange Commission, particularly in the "Risk Factors" section of our Annual Report on Form 10-K for the period ended December 31, 2014 and our Quarterly Report on Form 10-Q for the period ended March 31, 2015, as such Risk Factors may be updated from time to time in subsequent reports. Furthermore, such forward-looking statements speak only as of the date of this press release. We undertake no obligation to update any forward-looking statements to reflect events or circumstances after the date of such statements.

About Inteliquent

Inteliquest is a leading provider of connectivity among communications service providers. Inteliquest is used by nearly all national and regional wireless carriers, cable companies and CLECs in the markets it serves, and its network carries billions of minutes of traffic per month. Please visit Inteliquest's website at WWW.INTELIQUENT.COM and follow us on Twitter @Inteliquest.

Use of Non-GAAP Financial Measures

In this press release we disclose "Adjusted EBITDA" which is a non-GAAP financial measure. For purposes of SEC rules, a non-GAAP financial measure is a numerical measure of a company's performance, financial position, or cash flows that either excludes or includes amounts that are not normally excluded or included in the most directly comparable measure, calculated and prepared in accordance with generally accepted accounting principles in the United States (GAAP).

EBITDA is defined as net income before (a) interest expense, net (b) income tax expense and (c) depreciation and amortization. Adjusted EBITDA is defined as EBITDA as further adjusted to eliminate: non-cash share-based compensation; non-recurring amounts incurred in connection with amounts paid in connection with the resolution of employee related matters; and amounts received by the Company from an escrow fund related to the purchase of Tinet as a result of a settlement with the sellers of Tinet. We believe that the presentation of Adjusted EBITDA included in this press release provides useful information to investors regarding our results of operations because it assists in analyzing and benchmarking the performance and value of our business. We believe that presenting Adjusted EBITDA facilitates company-to-

company operating performance comparisons of companies within the same or similar industries by backing out differences caused by variations in capital structure, taxation and depreciation of facilities and equipment (affecting relative depreciation expense), which may vary for different companies for reasons unrelated to operating performance. These measures provide an assessment of controllable operating expenses and afford management the ability to make decisions, which are expected to facilitate meeting current financial goals as well as achieve optimal financial performance. They provide an indicator for management to determine if adjustments to current spending decisions are needed. Furthermore, we believe that the presentation of Adjusted EBITDA has economic substance because it provides important insight into our profitability trends, as a component of net income, and allows management and investors to analyze operating results with and without the impact of depreciation and amortization, interest and income tax expense, non-cash share-based compensation, amounts paid in connection with the resolution of employee related matters, and amounts received by the Company from an escrow fund related to the purchase of Tinet as a result of a settlement with the sellers of Tinet. Accordingly, these metrics measure our financial performance based on operational factors that management can impact in the short-term, namely the operational cost structure and expenses of our business. In addition, we believe Adjusted EBITDA is used by securities analysts, investors and other interested parties in evaluating companies, many of which present an EBITDA measure when reporting their results. Although we use Adjusted EBITDA as a financial measure to assess the performance of our business, the use of Adjusted EBITDA is limited because it does not include certain material costs, such as depreciation, amortization and interest and taxes, necessary to operate our business. We disclose the reconciliation between EBITDA and Adjusted EBITDA

and net income below to compensate for this limitation. While we use net income as a significant measure of profitability, we also believe that Adjusted EBITDA, when presented along with net income, provides balanced disclosure which, for the reasons set forth above, is useful to investors in evaluating our operating performance and profitability. Adjusted EBITDA included in this press release should be considered in addition to, and not as a substitute for, net income as calculated in accordance with generally accepted accounting principles as a measure of performance.

CONTACT: Analyst Contact:

Kurt Abkemeier

INVESTORRELATIONS@INTELIQUENT.COM



Source: Inteliquest

News Provided by Acquire Media

EXHIBIT C

PSTN SERVICES ATTACHMENT

This Public Switched Telephone Network ("PSTN") Services Attachment (this "Services Attachment" or "SA") is entered into this 23rd day of June, 2015 (the "SA Effective Date") by and between Inteliquent, Inc., a Delaware corporation having its principal place of business at 550 West Adams Street, Suite 900, Chicago Illinois 60661 ("Provider"), and T-Mobile USA, Inc., a Delaware corporation having its principal place of business at 12920 SE 38th St., Bellevue, WA 98006 ("T-Mobile"). Provider and T-Mobile are referred to collectively as the "Parties," and each individually as a "Party."

This SA, which consists of these terms and conditions and any attached exhibits or schedules, is made part of the Master Services Agreement between Provider and T-Mobile dated as of June, 2015 (the "GTCs"), and the terms of the GTCs are incorporated herein by this reference in accordance with the requirements of the GTCs. All capitalized terms used but not otherwise defined in this SA have the same meaning as the capitalized terms have in GTCs.

1. Inapplicable Sections of the GTCs.

- A. The following Sections of the GTCs or Schedules, as applicable, do not apply to this SA:
 - i. **Section 4.7(e) (Failure to Meet Transition Milestones);**
 - ii. **Section 4.7(f) (Termination by T-Mobile for Cause);**
 - iii. **Section 13.5 (Transfer of T-Mobile Personnel);**
 - iv. **Section 14 (Software and Proprietary Rights); provided, however, that Section 14.8 (Ownership of Non-Software Materials), Section 14.9 (Works Made for Hire), Section 14.10 (Residual Knowledge), and Section 14.13 (License to Services) each individually apply to this SA;**
 - v. **Section 15.4(b)(i) (Provider Facilities);**
 - vi. **Section 15.5 (Procurement of Equipment and Software);**
 - vii. **Section 15.6 (Disposal of Equipment);** and
 - viii. Sections 13.1, 13.2, 13.3 and Appendix F-2 of **Schedule 8 (Governance),**
- B. The following Sections of the GTCs or Schedules, as applicable, do not apply to this SA during the Initial Term:
 - i. **Section 8.2 (Benchmarking) and Schedule 5;** and
 - ii. **Section 10.6 (Adjustment of Service Levels).**

[* * *] The confidential content of this Exhibit 10.2 has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

C. The following Sections of the GTCs will apply to this SA only to the extent that the Parties create one or more of the Schedules referred to in each individual Section. As of the SA Effective Date, the Parties hereby expressly agree that no such Schedules have been created for the purposes of this SA:

- i. Section 15.1 (Third Party Contracts);
- ii. Section 15.2 (Assigned Contracts);
- iii. Section 15.7 (Required Consents);
- iv. Section 16.7 (Third Party Contracts); and
- v. Section 16.12 (Deliverables).

2. Services. Commencing on the applicable start dates set forth herein, Provider shall provide to T-Mobile the following Services:

A. PSTN Services that route inbound and outbound PSTN traffic on behalf of T-Mobile through Provider's platform rather than through the equal access or local tandems of third party carriers for the purpose of:

- i. Terminating outbound PSTN traffic that originates and terminates within the same Major Trading Area, as defined in 47 C.F.R. 51.707(b)(2), ("MTA") on T-Mobile's behalf in all Local Access and Transport Areas ("LATAs") within the United States where T-Mobile has assigned telephone numbers as of the SA Effective Date ("Outbound IntraMTA Service"). If, at any time during the Term, T-Mobile subsequently assigns telephone numbers in LATAs in the United States where it does not operate as of the SA Effective Date ("New LATA"), the Parties will jointly create a plan to deploy the Outbound IntraMTA Service in any such new LATA(s) within the schedule agreed upon in such plan;
- ii. Terminating outbound PSTN traffic that originates and terminates in different MTAs on T-Mobile's behalf in all LATAs in the contiguous United States, Alaska, Hawaii and Puerto Rico ("Outbound InterMTA Service");
- iii. Delivering outbound toll-free PSTN traffic on T-Mobile's behalf to the appropriate interexchange carrier ("IXC") in all LATAs where T-Mobile has assigned telephone numbers ("Outbound 8YY Service");
- iv. Accepting inbound PSTN traffic that originates from third party providers and terminates within the same MTA on T-Mobile's behalf and delivering such traffic to the POI designated by T-Mobile in Schedule 1 (Points of Interconnection) ("Inbound IntraMTA Service") in all LATAs where T-Mobile has assigned telephone numbers; *provided, however, that, if requested by T-Mobile at any time during the Term, Provider shall deploy the Inbound IntraMTA Service in any New LATA pursuant to an implementation plan that is jointly agreed upon by the Parties that is as short as reasonably possible but no longer than six (6) months; and*

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v. Accepting inbound PSTN traffic that originates from third party providers and terminates in different MTAs on T-Mobile's behalf and delivering such traffic to the POI designated by T-Mobile in Schedule 1 (Points of Interconnection). Inbound InterMTA Service includes both (i) InterMTA traffic that an IXC delivers to a Provider tandem, which traffic Provider then terminates to T-Mobile ("Inbound Tandem IXC Service") and (ii) InterMTA traffic that Provider (acting as an IXC) terminates to T-Mobile ("Inbound Wholesale Service").

vi. Each service listed above individually is a "Service" and they collectively are the "Services." The Parties acknowledge and agree that the initial implementation of the Services to the ILECs shall rely upon T-Mobile's interconnection agreements ("ICAs").

B. None of the Services include the provision of 911, 811, 411, 9XX, 311, 611, 500, Directory Assistance, or similar call types.

3. **Traffic Commitments and Exclusivity.** T-Mobile will use the Services for [* * *] of the origination and termination of PSTN traffic that does not meet the definition of Excluded PSTN Traffic; *provided, however,* that T-Mobile may, in its sole discretion, use the Services for the origination and termination of Excluded PSTN traffic.

A. "Excluded PSTN Traffic" means all calls:

- i. that are not end user customers of T-Mobile;
- ii. for which applicable Law prohibits, or restricts, T-Mobile from routing through, or solely through, Provider;
- iii. during any Transition Period;
- iv. during any Probation Period;
- v. while Provider is providing T-Mobile with Termination Assistance Services;
- vi. originated by end users of T-Mobile that have arranged for alternative methods of call origination or termination;
- vii. for any period in which Provider is, temporarily or permanently, unwilling or unable to meet the applicable Service Levels, including, but not limited to, calls during any Force Majeure Event or calls during any event that generates overflow traffic;
- viii. routed pursuant to a contract [* * *]; T-Mobile elects to continue following a Service discontinuation pursuant to Section 12.B.ii(4) of this SA; or
- ix. routed pursuant to a Peering Agreement between T-Mobile and any third party. For purposes of this SA, "Peering Agreement" means [* * *].

4. **Connectivity and Infrastructure Requirements.**

A. On the Provider's side of the POI, Provider shall, at its sole cost and expense, establish, maintain, and manage all circuits, hardware, software and services necessary for the provision

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and use of the Services, including, but not limited to, (i) connectivity between Provider and third parties and (ii) connectivity from Provider's facilities to the T-Mobile Points of Interconnection ("POIs") set forth in Schedule 1 (Points of Interconnection). Based on the need to accommodate additional traffic volumes the Parties will mutually agree to add new POIs, remove one or more POI(s) or change the location of existing POIs.

- i. Provider shall, at each POI, establish, maintain, and manage fully redundant [* * *] circuits that are capable of meeting the Service Levels despite the simultaneous failure of three (3) POIs, and, for the [* * *] circuits, utilization will be maintained at [* * *] or less at peak busy hours.
- B. Provider shall ensure that all Services are capable of handling [* * *] more than the [* * *] percentile of traffic volume in a given week adjusted for seasonal impacts over the year with no more than [* * *] utilization in the event of a failure of one or more POIs. T-Mobile and Provider shall provide to each other their respective Network Operation Center ("NOC") information, trouble reporting procedures, contact information and escalation procedures, and attach such information and procedures at Schedule 2 (Provider NOC Information, Trouble Reporting Procedures, Contact information and Escalation Procedures) and Schedule 3 (T-Mobile NOC Information, Trouble Reporting Procedures, Contact information and Escalation Procedures). In the event of a conflict between any Provider procedure and any T-Mobile procedure, the Parties shall follow the T-Mobile procedure; *provided, however,* that, upon request by Provider, the Parties shall negotiate in good faith to address any such conflicts.
- C. As soon as reasonably possible, but no later than ninety (90) days after T-Mobile has provided the Service Acceptance Notice, defined in Section 5 (Trial) of this SA below, of the last Service remaining in the Trial, and agreed to be fully bound by this SA for the remainder of the Term, Provider shall complete the upgrades necessary to meet the requirements of the Service Levels, at each of the POIs listed in Schedule 1 (Points of Interconnection) as of the SA Effective Date.

5. **Trial.** Beginning on June 2, 2015, the Parties initiated a trial pursuant to a Letter of Intent ("LOI") that will continue pursuant to this SA in order for Provider to provide T-Mobile with: (a) Inbound IntraMTA Service from (i) third parties with which Provider is directly connected and (ii) the applicable incumbent local exchange carriers ("ILECs"), (b) Inbound InterMTA Service, (c) Outbound IntraMTA Service; *provided, however,* that Outbound IntraMTA Service traffic sent to the applicable ILECs will be provided under T-Mobile ICAs, Outbound InterMTA Service and Outbound 8YY Service ("Trial") throughout (i) [* * *], (ii) [* * *], and (iii) [* * *] (collectively, the "Trial Services"), and to provide such Trial Services to T-Mobile during the Trial; *provided, however,* that Provider shall endeavor to meet the SLAs during the Trial but will not be subject to Service Credits for any failure to meet any SLAs during the Trial. As part of the Inbound InterMTA Service, T-Mobile has designated Provider in the LERG as T-Mobile's Feature Group D Tandem. For Outbound InterMTA Service during the Trial, Provider shall, with the assistance of T-Mobile, install two trunk groups for such Outbound InterMTA Service (the "Trunks"), each with the capacity limited to [* * *] sessions per trunk group delivered to an existing POI designated by T-Mobile for each of the Trunks; *provided further, however,* that T-Mobile will only send Outbound InterMTA Service traffic that is generally consistent with its overall retail traffic origination profile (e.g., no disproportionate traffic to high cost codes) over the Trunks. As soon as the Trunks are in place, T-Mobile may use Outbound InterMTA Service. During the Trial, T-Mobile may not send more than [* * *] of Outbound 8YY Service.

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A. End of Trial. The Trial for each individual Service will end ("End of Trial Date") upon the earliest of:

- i. [* * *] ("Expiration of Trial") if T-Mobile has not previously provided Provider with a Service Acceptance Notice (as defined below) or a Service Rejection Notice (as defined below) with respect to any individual Service, upon which date T-Mobile will be deemed to have provided notice in writing of the acceptance of all Services ("Service Acceptance Notice"); *provided, however,* that T-Mobile must provide the Service Acceptance Notices or Service Rejection Notices for Outbound 8YY Service and Outbound InterMTA Service on the same date;
- ii. The date upon which T-Mobile provides Provider with a Service Acceptance Notice for any individual Service, which T-Mobile may, in its sole discretion, provide to Provider at any time during the Trial; and
- iii. The date upon which T-Mobile notifies Provider in writing of the rejection of Service ("Service Rejection Notice"), which T-Mobile may, in its sole discretion, provide to Provider at any time during the Trial, in which case T-Mobile may, in its sole discretion, terminate this SA without any liability or further commitment by T-Mobile to Provider under this SA.

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B. **Billing for Trial.** Notwithstanding anything to the contrary in this SA, Provider shall provide the Trial Services at the rates set forth in the following table.

Service	Rate or Credit	
Inbound IntraMTA Service	[* * *] per Minute of Use	
Outbound IntraMTA Service	See Schedule 5	
Outbound 8YY Service		
Inbound Tandem IXC Service		
	ILEC Regions	
	Usage Sensitive Port Recovery Credit (per minute)	
	Century Link/Qwest LEC areas	[* * *]
	Verizon LEC areas	[* * *]
	AT&T/Ameritech, Bell South and Pac Bell LEC areas	[* * *]
	AT&T/SWBT LEC areas	[* * *]
	All other areas not identified above	[* * *]

Outbound InterMTA Service **[* * *] per Minute of Use**

Inbound Wholesale Service **[* * *] per Minute of Use**

C. If Provider incurs any unavoidable third-party costs (including amounts paid to third parties for equipment), not to exceed [* * *] as a result of the termination of one or more Services or the SA during the Trial ("Unavoidable Third Party Costs"), T-Mobile shall continue to purchase Outbound 8YY Services from the Provider at the rate set forth in this SA until the total payments for such Outbound 8YY Services pursuant to this SA exceed the total Unavoidable Third Party Costs; *provided, however*, that Provider shall take all commercially reasonable steps possible (a) to minimize the possibility of Unavoidable Third Party Costs when undertaking any cost, (b) to mitigate the amount of Unavoidable Third Party Costs upon receiving a Service Rejection Notice, and (c) to provide as much advanced written notice to Manoj Kumar as is reasonably possible of any approaching deadlines that create the possibility of Unavoidable Third Party costs.

6. **Term.** The initial term of this SA shall be for a period of three (3) years commencing on the End of Trial Date ("Initial Term"). After the Initial Term, unless Provider provides written notice to T-Mobile terminating this SA at least ninety (90) days prior to the expiration of the Initial Term or any Renewal

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Term, this SA shall be renewed for two (2) successive one (1) -year renewal periods (each, a “Renewal Term”) upon T-Mobile’s exercise of its option to renew by delivering written notice of renewal to Provider at least thirty (30) days prior to the end of the Initial Term or the then current Renewal Term. The Initial Term and the Renewal Term are referred to collectively as the “Term.”

7. **Services Implementation.**

Excluding all delays caused by any party not under Provider’s control, including but not limited to T-Mobile, an ILEC, CLEC, CMRS provider, or an IXC, or delays caused by a Force Majeure Event, Provider shall implement the Services in accordance with the following timeline (the “Implementation Timeline”); *provided, however*, that Provider shall seek to mitigate any delays caused by any third party.

A. Beginning on the date upon which Provider receives the Service Acceptance Notice for one of the following Services, Provider shall commence implementing such Service and complete such implementation no later than [* * *] months after the SA Effective Date. For the purposes of this SA, implementation of the following Services will be complete when:

- i. Provider is capable of providing Outbound InterMTA Service in accordance with the requirements of this SA (T-Mobile projects the amount of this traffic to be [* * *] million minutes of use (“MOUs”) per month as of the SA Effective Date); and
- ii. Provider is capable of providing Outbound 8YY Service in accordance with the requirements of this SA (T-Mobile projects the amount of this traffic to be [* * *] million MOUs per month as of the SA Effective Date).

B. Beginning on the date upon which Provider receives the Service Acceptance Notice for one of the following Services, Provider shall commence implementing such Service and complete such implementation within [* * *] months. For the purposes of this SA, implementation of the following Services will be complete when:

- i. Provider is capable of providing Inbound Tandem IXC Service and Inbound Wholesale Service in accordance with the requirements of this SA (T-Mobile projects the amount of the traffic for these Services to be [* * *] million MOUs per month as of the SA Effective Date);
- ii. Provider is capable of providing Outbound IntraMTA Service and Inbound IntraMTA Service in accordance with the requirements of this SA (T-Mobile projects the amount of the traffic for these Services to be [* * *] million MOUs per month as of the SA Effective Date). As part of this implementation, Provider shall meet the following interim milestones:
 - (1) Within [* * *] months after receipt of the Service Acceptance Notice, Provider shall be capable of handling [* * *] million MOUs;
 - (2) Within [* * *] months after receipt of the Service Acceptance Notice, Provider shall be capable of handling [* * *] million MOUs;
 - (3) Within [* * *] months after receipt of the Service Acceptance Notice, Provider shall be capable of handling [* * *] million MOUs; and

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(4) Within [* * *] months after receipt of the Service Acceptance Notice, Provider shall be capable of handling [* * *] million MOUs.

For Outbound IntraMTA Service and Inbound IntraMTA Service traffic exchanged under the ICAs with ILECs, the implementation will begin [* * *] days after the commencement of the implementation of the Inbound Tandem IXC Service.

C. Subject only to the limitations set forth in the first paragraph of Section 7, Provider shall:

- i. pay T-Mobile for each call that T-Mobile cannot originate using the Outbound InterMTA Service due to Provider's failure to meet the Implementation Timeline at a rate of [* * *] per MOU until Provider is capable of providing Outbound InterMTA Service in accordance with the requirements of this SA for one hundred percent (100%) of all calls that T-Mobile may seek to originate using such Outbound InterMTA Service;
- ii. reduce the total amount owed by T-Mobile to Provider on any invoice by [* * *] if Provider was not capable of providing Inbound InterMTA Service due to Provider's failure to meet the Implementation Timeline during the time period covered by such invoice; and
- iii. reduce the total amount owed by T-Mobile to Provider on any invoice by [* * *] if Provider was not capable of providing Outbound IntraMTA Service due to Provider's failure to meet the Implementation Timeline during the time period covered by such invoice.

D. Provider hereby acknowledges and agrees that the payments and credits for failing to meet the Implementation Timeline will not be deemed or construed to be liquidated damages.

E. Notwithstanding any provision in the GTCs, payment by Provider of the amounts set forth in Section 7.C. will be T-Mobile's sole and exclusive remedy for Provider's failure to meet the Implementation Timeline; *provided, however,* that T-Mobile may also, at its sole election, terminate any of the Services that Provider has failed to substantially implement by the deadline set forth in the Implementation Timeline if the Provider has not cured such failure within a time period that is [* * *] as long as the time period for implementation set forth in the Implementation Timeline (*i.e.*, if the Implementation Timeline was [* * *] months, the cure period would be [* * *] months); *provided, however,* that T-Mobile must exercise its right to terminate under this Section 7.E. within thirty (30) days of the date upon which such termination accrued; *provided further, however,* that T-Mobile must terminate (i) both Outbound IntraMTA Service and Inbound IntraMTA Service if T-Mobile terminates Outbound 8YY Service pursuant to this Section; and (ii) Outbound InterMTA Service if T-Mobile terminates Inbound Tandem IXC Service pursuant to this Section.

8. **Routing and Signaling.**

A. Provider shall route all calls pursuant to industry standards, including, but not limited to, routing calls to the published codes in the Local Exchange Routing Guide ("LERG") where applicable; *provided, however,* that, from time to time, T-Mobile may notify Provider of different routing than the published codes in the LERG, and within thirty (30) days of such notification, Provider shall route traffic using such codes as directed by T-Mobile.

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- B. Provider shall follow all industry standards, including, without limitation, those on signaling (Telcordia FR-15, FR-905, and GR-1100-CORE).
- C. Provider shall pass to the next provider all relevant signaling information that it receives from T-Mobile for outbound Services and pass to T-Mobile all relevant signaling information it receives from the provider handing the call to Provider. Provider will add to the signaling stream all information necessary for the inbound and outbound Service traffic to be routed, and will not fraudulently manipulate any signaling information.
- D. Upon request by T-Mobile, Provider and T-Mobile will jointly plan changes in the compressor/decompressor ("codec") system or digital signal processing ("DSP") used to provide any or all Services and implement a transcoder free service to deliver the calls to third parties using the same codec or DSP as received by T-Mobile. The changes will be implemented within mutually agreed upon test and implementation timeframes. Provider will support minor transcoding at no charge; *provided, however,* that if 10% or more of calls require transcoding ("DSP Resources"), then Provider and T-Mobile will negotiate in good faith commercial terms for the provision of these transcoding services.

9. **Rates, Credits and Billing**

- A. Provider shall charge T-Mobile the rate set forth in **Schedule 4 (Provider Services Rates and Credits)** in accordance with the requirements of the GTCs based on the actual conversation MOUs measured from receipt of answer supervision to receipt of disconnect supervision. Each call will be billed a minimum of six (6) seconds for duration and in six (6) second increments thereafter, with such time accumulated at the end of the billing period and rounded up or down to the next whole minute.
- B. For Inbound Tandem IXC Service, Outbound 8YY Service, and Inbound Wholesale Service, Provider shall provide T-Mobile with the credit set forth in **Schedule 4 (Provider Services Rates and Credits)** in accordance with the requirements of the GTCs based on the actual conversation MOUs measured from receipt of answer supervision to receipt of disconnect supervision. The credit amount for each call will be calculated using a minimum of one second for duration and in one second increments thereafter, with such time accumulated at the end of the billing period and rounded up or down to the next whole minute. The credit will be applied to the billing month following the month in which the credit is earned (*i.e.*, one month in arrears). During any month in which the credits that Provider owes T-Mobile under this SA exceeds the amounts that T-Mobile owes Provider under this SA, Provider shall pay T-Mobile the amount by which the credits exceed the amounts owed by T-Mobile no later than the due date set forth on such invoice, which shall be no later than the date by which T-Mobile would have been obligated under the GTCs and this SA to pay Provider for any amounts due for Services covered by such Invoice.
- C. If T-Mobile exercises a right under the GTCs or this SA to terminate the GTCs or this SA, in full or in part, Provider shall not impose, and T-Mobile has no obligation to pay, any termination fees, charges or penalties.
- D. Except as provided in Section 5 of this SA, all Services are subject to the Service Levels and Service Credit requirements set forth in this SA.

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E. Notwithstanding anything in this SA to the contrary, Provider shall not seek to collect from T-Mobile, and T-Mobile has no obligation to pay Provider, any rate, fee or charge that is not set forth in **Schedule 4 (Provider Services Rates and Credits)**.

10. **Reports.**

A. In addition to any information T-Mobile request pursuant to the Regulatory Schedule, Provider shall, within ten (10) business days after Provider issues the monthly invoice to T-Mobile, provide T-Mobile with a report including the following information and in the form specified by T-Mobile:

- i. Daily summary information, including:
 - (1) Daily traffic summaries, and
 - (2) Daily quality of service reports;
- ii. SLA performance summary information, reports for each SLA.
- iii. Service Event (defined below) information, including:
 - (1) Reports on Service Event Trouble Tickets, containing:
 - (A) The number and categories of Service Event Trouble Tickets opened by T-Mobile, and
 - (B) The number and categories of Service Event Trouble Tickets opened by Provider;
 - (2) Reports on Provider's Service Event response performance, containing:
 - (A) Descriptions of any and all Service Events, defined as the period of time for which the Service is unavailable or degraded, as described in the table in Section 10.C. This information must include every Service Event occurring in the prior month affecting T-Mobile, even if it was resolved before Provider was required to contact T-Mobile;
 - (B) The actual or estimated timeframe to resolve the Service Event(s), and
 - (C) The average Service Event response time per month.

- B. A "Service Event" means a Service Outage or a Service Impairment as those terms are defined in Section 11.B below.
- C. In addition to any information that T-Mobile may request pursuant to the Regulatory Schedule, Provider shall, within forty-eight (48) hours following the occurrence of a Priority 1 Event, provide T-Mobile with a detailed analysis of the Service Outage, including time of occurrence and duration, and either an interim or final closed-loop corrective action report that includes a root cause analysis and corrective action plan detailing how the cause of the Service Outage will be addressed to prevent similar Service Outages from occurring in the future; *provided, however,* that, if Provider provides an interim report, Provider will provide a final report as soon as

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reasonably possible thereafter, with updates provided on a daily basis until the final report is provided.

D. In addition to, and without limiting, any other obligation of Provider under the GTCs or SA, Provider shall, as soon as reasonably possible, provide T-Mobile with a copy of any report or form filed, or prepared for filing, with the Federal Communications Commission ("FCC") to comply with the FCC's rural call completion rules, including, but not limited to, the requirements set forth in *In the Matter of Rural Call Completion*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 13-39 (rel. Nov. 8, 2013), including, but not limited to, filing the mandated quarterly reports with the FCC that contain, at a minimum, the following information:

- i. For each Rural OCN:
 - (1) The OCN and the state, and
 - (2) For attempted interstate calls: the total number of attempted calls, the number of attempted calls that were answered, the number of attempted calls that were not answered (reported separately for call attempts signaled as busy, ring no answer, or unassigned number).
 - (3) For attempted intrastate calls: the total number of attempted calls, the number of attempted calls that were answered, the number of attempted calls that were not answered (reported separately for call attempts signaled as busy, ring no answer, or unassigned number).
- ii. For each non-Rural OCN, the aggregate information for attempted intrastate calls: the total number of attempted calls, the number of attempted calls that were answered, the number of attempted calls that were not answered (reported separately for call attempts signaled as busy, ring no answer, or unassigned number).

For purposes of this SA, the term "Rural OCN" means the Operating Carrier Number ("OCN") associated with an end office switch of a rural local exchange carrier ("RLEC") that is identified on the list published by the National Exchange Carrier Association ("NECA"), as updated from time to time, excluding any OCNs mutually agreed to by the Parties.

E. To the extent Provider is not required to include the following information in any report or form filed with the FCC, Provider shall concurrently provide T-Mobile with verification regarding Provider's collection and retention for a period of at least six (6) months of required information (as well as the information itself if T-Mobile so requests), including:

- i. Calling party number;
- ii. Called party number;
- iii. Date;
- iv. Time of day;

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- v. Whether the call is handed off to an intermediate provider and, if so, which intermediate provider;
- vi. Whether the call is going to a Rural OCN and, if so, which Rural OCN;
- vii. Whether the call is interstate or intrastate;
- viii. Whether the call attempt was answered; and
- ix. Whether the call attempt was completed to the incumbent LEC but signaled as busy, ring no answer, or unassigned number.

F. Provider shall provide T-Mobile with a draft of any report or form that Provider intends to file with the FCC or any other governmental authority as soon as possible but no later than five (5) business days before the intended filing date (unless the deadline for filing is shorter than five (5) business days) if the filing of such draft report might reasonably be interpreted as evidence that T-Mobile may not be in full compliance with applicable Law; *provided, however*, that Provider shall provide T-Mobile with written notice of intent to file a report pursuant to this Section if Provider will not, for any reason, be able to provide T-Mobile with the draft of such report five (5) business days before the filing deadline.

11. **Scheduled Maintenance and Unplanned Outages.**

A. **Scheduled Maintenance Process.**

- i. **Scheduled Maintenance** means planned maintenance of the Provider network that has been pre-approved by T-Mobile in writing, not to be unreasonably withheld or delayed. Where Scheduled Maintenance of the Provider network has the potential to result in a Service Outage, Provider shall:
 - (1) provide T-Mobile with three (3) days' prior written notice for maintenance of transport provided by third parties and seven (7) days' prior written notice for all other maintenance;
 - (2) work with T-Mobile to try to minimize Service Outages; and
 - (3) use commercially reasonable efforts to perform such Scheduled Maintenance between 2:00 a.m. and 5:00 a.m. for maintenance that could result in a Service Outage, and between midnight and 5:00 a.m. for all other maintenance.
- ii. Maintenance shall not be deemed "Scheduled Maintenance" for the purposes of the definition of an Excused Outage if such maintenance (1) is performed outside the hours of midnight and 5:00 a.m. local time or (2) is not completed within a maintenance window communicated by Provider to T-Mobile in writing in accordance with the requirements of Section 11(A)(i)(1).

B. **Service Events.**

- i. A "**Service Outage**" is defined as the period of time for which a Service is unavailable or degraded to the point at which the Service is unusable as determined by the earlier of the

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detection of an alarm or the opening of a trouble ticket, and ends at the time the Service is restored such that the Service again meets the Service Levels set forth in this Agreement, including, but not limited to, the non-instantaneous loss of signaling or call completion or call processing interruption that prevents users from immediate reconnection and all Priority 1 Events as defined in the Service Event Table below.

- ii. A “Service Impairment” is defined as one or more users experiencing degradation in the Services. Impairments include, but are not limited to, events in the Priority 2, Priority 3, and Priority 4 Events as defined in the Service Event Table below, as well as quality of service issues (e.g., static, one-way audio, excessive post dial delay and echo), intermittent loss in call processing (e.g., intermittent call drops, inability to dial or receive calls from specific locations, degraded call completion rate), and/or a single telephone number being unreachable from specific locations or specific numbers.
- iii. The Mean Time to Repair (“MTTR”) over any period is the mean of the individual intervals between the start time and stop time of individual Service Outages or Service Impairments for the Services. The following Service Event Table describes the four priority levels for Service Outages and Service Impairments along with corresponding Provider response requirements.

Service Event Table

Level	Definition	Event	Requirements
Priority 1 (P1)	Critical <i>Highest Priority</i>	<ul style="list-style-type: none"> • Any network or system failure that results in a Loss of Service (“<u>LOS</u>”) as reported by: <ul style="list-style-type: none"> • NOC Fault Management Systems, • Provider, • T-Mobile, or • Internal or external customers. • Loss of Any Network Element • Loss of AC/DC Power Plant • Natural Disaster or Bomb Threat • Facility or Network Security breach • T-Mobile-Escalated Issues 	<ul style="list-style-type: none"> • Achieve a maximum of two (2) hour MTTR for all Priority 1 network events. • Provide proactive initial notification to T-Mobile within thirty (30) minutes on P1 critical events and update T-Mobile every thirty (30) minutes thereafter until the issues is resolved. • If proactive notification is not possible, provide initial notification to T-Mobile within twenty (20) minutes of the time the event is known by Provider or reported by T-Mobile, whichever is first, and update T-Mobile every thirty (30) minutes thereafter until the issue is resolved. • Provide updates to internal Provider management as required based on determinations made by NOCC management or as requested. • Escalate and notify internally and to T-Mobile in accordance with Provider established guidelines. • Thoroughly document all actions taken to resolve the issue. • Record the progress and details of the event and resolution in order to provide a detailed postmortem. • Notify Provider executives as required.

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Priority 2 (P2)	Major <i>High Priority</i>	<ul style="list-style-type: none"> • Loss of redundancy to Services (non-service affecting) • Network or system failures resulting in degradation of any services, features, network elements, or tools • Power Plant and environmental alarms (non-service affecting) • Security (system and facility) failure • Emergency Cable Locate requests 	<ul style="list-style-type: none"> • Achieve a four (4) hour MTTR for all P2 network events. • Provide proactive notification to T-Mobile within thirty (30) minutes on P2 events; update customer(s) every thirty (30) minutes, after the initial notification, until the issue is resolved. • If proactive notification is not possible, provide notification to T-Mobile within twenty (20) minutes of the time the event is known by Provider or reported by T-Mobile, whichever is first. • Provide T-Mobile notification as needed. • Resolve NSA issues as quickly and efficiently as possible to prevent loss of network services. • Thoroughly document all actions taken to resolve matter. • Update all involved parties as required by following established timelines. • Notify Provider executives as required. • Minimize escalations to next priority level.
Priority 3 (P3)	Minor <i>Moderate Priority; P1 and P2 events will supersede P3 events</i>	<ul style="list-style-type: none"> • Any trouble not categorized as P1 or P2 • A P1 or P2 event for which service has been restored, but requires further action • Installation assistance • Alarm verification • Cable Locate request • Coordination of two-party meets • Request for technical support 	<ul style="list-style-type: none"> • Achieve an eight (8) hour MTTR for all P3 network events. • Thoroughly document all actions taken to resolve issue. • Update all involved parties as required by following established timelines. • Minimize escalations to next priority level.
Priority 4 (P4)	Information only <i>Lowest Priority; Non-Service Affecting (NSA) events</i>	<ul style="list-style-type: none"> • Information only or warning trouble/tickets • Track Provider Employees • Track Provider CSR's • Security access requests • Delta exceptions for Baseline (Software and Hardware) • Delta exceptions for database integrity • Documentation deficiencies 	<ul style="list-style-type: none"> • Track and categorize any warning or informational issues. • Close all P4 tickets within ten (10) days. • Thoroughly document all actions taken to resolve matter. • Update all involved parties as required by following established timelines. • Minimize escalations to next priority level.

12. Service Level Agreement.

A. Terms Regarding Service Levels.

i. **Obligations to Achieve Service Levels.** Provider will meet or exceed the Service Levels as such Service Levels may be revised from time-to-time pursuant to the terms of the GTCs and this SA. Provider will be relieved of its obligations to meet applicable Service Levels, and T-Mobile will not be entitled to any Service Credit for corresponding failures to meet the applicable Service Levels, only if and to the extent that Provider demonstrates, to T-Mobile's reasonable satisfaction pursuant to a written root cause analysis in accordance with Section 10.7 (Root-Cause Analysis) of the GTCs, to have been caused by an Excused Outage as defined in Section 12.F of this SA. Provider hereby acknowledges and agrees that the Service Credits will not be deemed or construed to be liquidated damages, as a sole and exclusive remedy, or otherwise to limit any other rights or remedies T-Mobile has under the GTCs, this SA, or under applicable Laws; *provided, however, that, if T-Mobile recovers money damages from Provider as a result*

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of Provider's failure to meet a Service Level, Provider shall be entitled to set-off the amount of such damages against any Service Level Credits paid for the Service Level failure giving rise to such recovery.

ii. Continuous Improvement of Service Levels.

- (1) In addition to Provider's obligations under **Section 8.3 (Continuous Improvement and Best Practices)** of the GTCs, Provider and T-Mobile will cooperate and work together throughout the Term to further develop and refine the Service Levels set forth herein. These metrics will be used by Provider and T-Mobile to: (i) monitor the operational performance aspects of the delivery of the Services, or provision of Deliverables, by Provider; (ii) provide information to maintain the quality of such Services and/or Deliverables, as applicable; (iii) identify possible opportunities for improvements in performance throughout the Term; and (iv) revise Service Levels (provided that, any such revision will be handled by a Change Order and will be subject to mutual agreement pursuant to the Service Change Procedures).
- (2) In addition to the foregoing, once per year during the Term, the parties will review the Service Levels to determine whether, taking into account industry standards and technological developments ("Industry Changes"), one or more Service Levels should be increased by up to 10% of the difference between 100% and the then-current Service Level (a "Service Level Reset") to ensure that the Service Levels retain substantially the same relationship to industry standards and technology developments that existed before the Industry Changes, if any, that occurred during the previous year. By way of example and not limitation, if the Parties determine that an increase equaling 10% of the difference between 100% and the then-current Service Level of 99.4% is necessary to ensure that the Service Level retains substantially the same relationship to industry standards and technology developments that existed before the Industry Changes that occurred during the previous year, the Service Level Reset would be calculated as follows: $10\% * (100\% - 99.4\%) = 10\% * 0.6\% = 0.06\%$, and thus the Service Level would be increased from 99.4% to 99.46%.

iii. Measuring Tools. To the extent that Provider fails to measure any Service Level, such failure will be deemed a failure to meet the applicable Service Level, and the failure will be deemed to continue to occur each Measurement Period until Provider is capable of measuring such Service Level performance to the satisfaction of T-Mobile.

B. Determination of Service Credits.

i. Description of Service Levels.

- (1) Overview. Each Service Level is associated with the requirements set forth in Section 12.C below to measure Provider's performance against the Service Levels and to determine the corresponding Service Credits payable by Provider for its failure, if any, to achieve the Service Level. In no event will Provider be deemed to have failed to meet a Service Level if such failure is an Excused Outage.

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- (2) **Measurement Periods for Service Levels.** Provider's performance against each Service Level will be measured over a calendar month (each, a "Measurement Period").
- (3) **At-Risk Amounts.** A portion of the sum of all payments plus the sum of all credits due during a Measurement Period will be placed "at-risk" in the event that Provider fails to achieve the Service Levels during such Measurement Period (the "At-Risk Amount"). The At-Risk Amount during a Measurement Period will equal [* * *] of the sum of all payments plus the sum of all credits due during such Measurement Period pursuant to Schedule 4 (i.e., the payments and credits that would have been payable and due for the Services performed during the Measurement Period, prior to adjustments for Service Level breaches).
- (4) **Service Level Weights.** Each Service Level is assigned a factor (a "Weight"), expressed as a percentage, such that the total of all Weights for all Service Levels will not exceed [* * *]. The initial assignment of these Weights is set forth in Section 12.C below. T-Mobile may revise the Weights thereafter at its sole discretion by written notice provided thirty (30) days in advance of the forthcoming calendar quarter, and such Weights will be effective for the duration of such calendar quarter; provided, however, that the sum of the Weights will at no time exceed [* * *]. For the avoidance of doubt, the Weights for Service Levels may be set to a value of zero percent (0%), but a value of zero percent (0%) will not be deemed to relieve Provider of its obligations to perform the applicable Services in conformance with such Service Level, nor to limit any rights or remedies for breach of such Service Level under the terms hereof, of the GTCs, or otherwise under applicable Laws.

ii. **Service Credits.**

- (1) **Calculation of Service Credits.** For a given Measurement Period "i", the total Service Credits will equal the sum of the aggregate Service Credits for the Service Levels for each Service in such Measurement Period.

The Service Credits payable during Measurement Period "i" may be expressed as follows:

Total Service Level Credits_i = the lesser of

$$(i) \quad \sum_{l=1}^L \text{Weight}_l * \text{ARA}_l$$

and

$$(ii) \quad \text{ARA}_l$$

where

"l" – an index for each Service Level breached during Measurement Period "i."

"Weight_l" = the Weight for Service Level "l."

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“ARA_i” = the At-Risk Amount for Measurement Periods ending in Measurement Period “i.”

For the sake of clarity, the following is an example calculation:

Assumptions for the purpose of this example calculation:

- (1) The Provider failed two Service Levels during the month at issue;
- (2) The weights of the Service Levels at issue = 60% and 100%, respectively;
- (3) The sum of the invoiced payments and credits due for the month at issue = [* * *];
- (4) The ARA = [* * *] of the sum of the invoiced payments and credits due for the month at issue = [* * *]; and
- (5) The indices of the Service Levels at issue = [* * *] and [* * *], respectively.

Example Credit Calculation:

[* * *] =

[* * *] = [* * *]

Accordingly, the Service Credit for the month at issue = [* * *]

(2) Process for Application of Service Credits. In the event that Provider does not achieve a particular Service Level in a particular month, Provider shall issue a Service Credit to T-Mobile as set forth for the applicable Service Level upon the earlier of (1) determining that T-Mobile is entitled to a Service Credit pursuant to this SA; or (2) receiving a Service Credit Request from T-Mobile.

(A) Trouble Tickets. Provider shall monitor the Services and, to the extent that Provider detects any problem, including any Service Outage or Service Impairment, Provider shall open a Trouble Ticket recording the outage and notify T-Mobile of the issue and the Trouble Ticket number. T-Mobile may also submit Trouble Tickets to Provider if T-Mobile notices any problems or Service Outages.

(B) Service Credit Request. T-Mobile may make a request in writing by e-mail to the Provider at noc@inteliquent.com for a Service Credit within thirty (30) days of the end of the then-current billing month. The Service Credit Request must include the Trouble Ticket number to the extent Provider opened a Trouble Ticket relating to the Service Credit Request.

(3) Application of Service Credits. Provider shall credit all applicable Service Credits to T-Mobile’s account, appearing as a line item on a bill delivered on the first invoice issued by Provider after such Service Credit accrued.

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(4) **Additional Termination Rights.** In addition to the application of Service Credits, T-Mobile may elect to terminate any or all Services without liability except for charges incurred prior to discontinuation of the Service(s) minus applicable Service Credits, at any time during the Term by providing Provider with written notice of discontinuance, if: (i) the Provider has failed to meet the Designated Tier of the same Service Level [* * *] times during any [* * *] months during the Term; (ii) the Provider has failed to meet the Designated Tier of any combination of Service Levels more than [* * *] times during any [* * *] months or more than [* * *] times during any [* * *] months; or (iii) a Service suffers a Service Outage that lasts for longer than [* * *]; *provided, however, that T-Mobile must terminate Outbound IntraMTA Service and Inbound IntraMTA Service if T-Mobile terminates Outbound 8YY Service pursuant to this Section; provided further, however, that T-Mobile must terminate Outbound InterMTA Service if T-Mobile terminates Inbound Tandem IXC Service pursuant to this Section.* In the event that T-Mobile discontinues the Services pursuant to this Section 12.B.ii.(4), all calls for which T-Mobile elects, in its sole discretion, to continue to any Services pursuant to this SA shall be deemed to be Excluded PSTN Traffic; *provided, however, that for clarity's sake, the ratios and triggers in Schedule 4 will continue to apply.* If T-Mobile is entitled to terminate this SA pursuant to this Section, T-Mobile must do so within 60 days of the event giving rise to the termination right; *provided, further however, that T-Mobile may toll its right to terminate during a probation period ("Probation Period") declared by T-Mobile; provided further, however, that the Probation Period shall not exceed ninety (90) days without the written consent of the Parties.* Notwithstanding anything to the contrary in the Agreement, for purposes of determining or exercising T-Mobile's rights under this Section 12.B.ii.(4), or Section 5.3 (Termination by T-Mobile) or Section 4.1(e) (Step-in Rights) of the GTCs, if the same event causes Provider to fail to meet more than one Service Level, such failures will be deemed to be a failure of a single Service Level only.

C. **Service Levels.**

- i. With respect to the Service Levels for Short Call Duration, Long Call Duration, ASR, NER and MOS, the Parties expressly agree that the respective Service Level measurement indicated below for such Service (if any) shall be adjusted in good faith based upon the first two Short Call Duration, Long Call Duration, ASR, NER or MOS Reports, as the case may be, no later than ninety (90) days after Provider receives the final Service Acceptance Notice for such Service; *provided, however, that until ninety (90) days following receipt of the final Service Acceptance Notice for such Service, Provider's failure to meet any Service Level will not (i) cause Provider to owe any credits pursuant to this Section 12.C or (ii) be included with respect to the determination of T-Mobile's right to terminate this SA or the GTCs.*
- ii. **Inbound TDM Network Availability:** Provider shall provide a [* * *]% Inbound TDM Network Availability Standard for Inbound IntraMTA Service, Inbound Tandem IXC Service, and Inbound Wholesale Service (the "Inbound TDM Network Availability Standard"). The Network is not available for the purposes of calculating the Inbound TDM Network Availability Standard during a Service Outage that is not an Excused Outage. In the event that Provider does not meet the Inbound TDM Network Availability

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Standard Service Level, Provider shall provide T-Mobile with a Service Credit based on the total fees or credits for the affected Service due for the relevant calendar month based on the cumulative unavailability of the affected Service in that same calendar month as set forth in the following table:

Inbound TDM Availability	Service Credit	Designated Tier
[* * *]	[* * *]	[* * *]
[* * *]	[* * *]	
[* * *]	[* * *]	
[* * *]	[* * *]	

- (1) Calculation. Inbound TDM Monthly Availability = is calculated on a TDM network wide basis as follows: $((24 \times \text{Number of Days in the month} \times 60) - (\text{Number of Minutes of Service Outage})) / (24 \times \text{Number of Days in the month} \times 60)$.
- (2) Initial Weight: [* * *]

- iii. Network Availability: Provider shall provide a [* * *] % Network Availability Standard for each Service (excluding the Services covered by the Inbound TDM Availability Standard), measured on a monthly MOU basis (the “Network Availability Standard”). The Network is not available for the purposes of calculating the Network Availability Standard during a Service Outage that is not an Excused Outage. In the event that Provider does not meet the Network Availability Standard Service Level, Provider shall provide T-Mobile with a Service Credit based on the total fees or credits for the affected Service due for the relevant calendar month based on the cumulative unavailability of the affected Service in that same calendar month as set forth in the following table:

Network Availability	Service Credit	Designated Tier
[* * *]	[* * *]	[* * *]
[* * *]	[* * *]	
[* * *]	[* * *]	
[* * *]	[* * *]	

- (1) Calculation. Network Monthly Availability = Total Monthly Minutes (based on a 30-day month) minus Total Service Outage Minutes for the Services (in a month) divided by Total Monthly Minutes (based on a 30-day month). Total Service Outage Minutes is defined as the average monthly minutes for the previous three (3) months for the same day of the week and time during which the Service Outage occurred.
- (2) Initial Weight: [* * *] %
- (3) For clarity’s sake, the Service is considered available even if one or more Provider network elements or links fail, so long as the Service successfully fails over and is provided over other elements/links.

- iv. Network Effectiveness Ratio: The Network Effectiveness Ratio (“NER”) measures the ability of a network to deliver a call to the called terminal, with busy signals and other

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call failures due to user behavior counted as “successful call delivery” for NER calculation purposes. Beginning ninety (90) days after Provider receives the Service Acceptance Notice for Outbound InterMTA Service, Provider shall ensure that NER meets or exceeds the levels set forth in the following table; *provided, however,* that Provider shall use commercially reasonable efforts, with no obligation to provide Service Credits, to endeavor to ensure that the NER meets or exceed [* * *] immediately upon implementation of Services. Provider shall monitor and report on NER to T-Mobile on a monthly basis, and shall provide monthly NER reports to T-Mobile; *provided further, however,* that failure by Provider to accurately determine NER shall not excuse Provider's failure to meet the NER Service Level, and the Parties shall negotiate in good faith to determine the actual percentage of NER as well as resolve the underlying causes of such failure to accurately detect NER. In the event that Provider does not meet the NER Service Level for reasons other than an Excused Outage, Provider shall provide T-Mobile with a Service Credit based on the total fees or credits for the affected Service due for the relevant calendar month based on the cumulative percentage of NER in that same calendar month as set forth in the following table, which percentages the Parties shall adjust in good faith based upon the first two NER Reports but no later than ninety (90) days after Provider receives the Service Acceptance Notice for Outbound InterMTA Service:

NER	Service Credit	Designated Tier
[* * *]	[* * *]	
[* * *]	[* * *]	
[* * *]	[* * *]	
[* * *]	[* * *]	
[* * *]	[* * *]	[* * *]

(1) **Calculation.** NER = 100 (Answered Calls + User Busy + Ring No Answer + Terminal Reject)/(Total Circuit Seizures)

(2) Initial Weight: [* * *], not to exceed [* * *].

v. **Short Call Duration.** The Short Call Duration Service Level is a percentage of Short Call Measured OCNs out of the total population of High Volume OCNs in a given month. “Short Calls” are calls with [* * *] in duration or shorter. “High-Volume OCN” means an OCN with more than [* * *] MOUs in a given month. “Short Call Measured OCN” means a High-Volume OCN with more than [* * *] fluctuation of the Short Calls count in a given month as compared to the preceding three (3) month average of Short Calls count for that OCN; *provided, however,* that if this Service Level is not met in any given month, then the calculation will not include the months when the Service Level is not met for determining future months and will continue to utilize the previous baseline. Beginning ninety (90) days after Provider receives the final Service Acceptance Notice, Provider shall ensure that the Short Call Duration Service Level meets or exceeds the levels set forth in the following table; *provided, however,* that failure by Provider to accurately measure the Short Call Duration Service Level shall not excuse Provider's failure to meet the Short Call Duration Service Level, and the Parties shall negotiate in good faith to determine the actual percentage threshold of Measured OCNs with more than a [* * *] fluctuation in Short Calls count in a given month as well as resolve the

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underlying causes of such failure to accurately detect Short Calls. In the event that Provider does not meet the Short Call Duration Service Level for reasons other than an Excused Outage, Provider shall provide T-Mobile with a Service Credit based on the total fees or credits for the affected Service due for the relevant calendar month based on the Short Call Duration Service Level in that same calendar month as set forth in the following table, which percentages the Parties shall adjust in good faith based upon the first two Short Calls Reports but no later than ninety (90) days after Provider receives the Service Acceptance Notice for Outbound InterMTA Service:

Percentage of Measured OCNs with more than [***] Fluctuation in Short Duration Count	Service Credit	Designated Level
[***]	[***]	
[***]	[***]	
[***]	[***]	
[***]	[***]	[***]

(1) Calculation. See above

(2) Initial Weight: [***], not to exceed [***]

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vi. **Long Call Duration.** The Long Call Duration Service Level is a percentage of Long Call Measured OCNs out of the total population of High Volume OCNs in a given month. “Long Calls” are calls with [* * *] in duration or longer. “High-Volume OCN” means an OCN with more than [* * *] MOUs in a given month. “Long Call Measured OCN” means a High-Volume OCN with more than [* * *]% fluctuation of the Long Calls count in a given month as compared to the preceding three (3) month average of Long Calls count for that OCN; *provided, however*, that if this Service Level is not met in any given month, then the calculation will not include the months when the Service Level is not met for determining future months and will continue to utilize the previous baseline. Beginning ninety (90) days after Provider receives the final Service Acceptance Notice, Provider shall ensure that the Long Call Duration Service Level meets or exceeds the levels set forth in the following table; *provided, however*, that failure by Provider to accurately measure the Long Call Duration Service Level shall not excuse Provider's failure to meet the Long Call Duration Service Level, and the Parties shall negotiate in good faith to determine the actual percentage of Long Calls as well as resolve the underlying causes of such failure to accurately detect Long Calls. In the event that Provider does not meet the Long Call Duration Service Level for reasons other than an Excused Outage, Provider shall provide T-Mobile with a Service Credit based on the total fees or credits for the affected Service due for the relevant calendar month based on the Long Call Duration Service Level in that same calendar month as set forth in the following table, which percentages the Parties shall adjust in good faith based upon the first two Long Calls Reports but no later than ninety (90) days after Provider receives the Service Acceptance Notice for Outbound InterMTA Service:

Percentage of Measured OCNs with more than a 5% Fluctuation in Long Call Duration Count	Service Credit	Designated Level
[* * *]	[* * *]	
[* * *]	[* * *]	
[* * *]	[* * *]	
[* * *]	[* * *]	[* * *]

- (1) **Calculation.** See above
- (2) Initial Weight: [* * *]%, not to exceed [* * *]

vii. **Voice Quality:** Voice Quality is measured by the industry standard Mean Opinion Score (“MOS”) voice quality assessment model that measures the impact of impairments in the Network by CODEC. The MOS for voice traffic transiting the network to and from T-Mobile will not average less than [* * *].

- (1) Provider shall monitor and report on Voice Quality to T-Mobile on a monthly basis. In the event Provider does not meet the Voice Quality Service Level for reasons other than an Excused Outage, T-Mobile will be entitled to a Service Credit based on the total fees or credits for the affected Service due for the relevant calendar month based on the MOS in that same calendar month as set forth in the following table, which percentages the Parties shall adjust in good faith based upon the first two MOS Reports but no later than ninety (90) days

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after Provider receives the final Service Acceptance Notice; *provided, however,* that Provider shall not owe any credits pursuant to this Section until 90 days following receipt of the final Service Acceptance Notice:

Average MOS Score		Service Credit	Designated Level
From	To		
[* * *]	[* * *]	[* * *]	[* * *]
[* * *]	[* * *]	[* * *]	
[* * *]	[* * *]	[* * *]	
	[* * *]	[* * *]	

- (2) Calculation: The Parties shall negotiate the method for calculation based on data obtained after Provider deploys Empirix equipment capable of measuring MOS in its network within ninety (90) days of receipt of the final Service Acceptance Notice.
- (3) Initial Weight: [* * *], not to exceed [* * *].

viii. **Answer Seizure Ratio (“ASR”):** ASR is defined as the ratio of successfully answered calls to total number of calls attempted on outbound calls, where busy signals and other rejections count as failures. The ASR Service Level is a percentage of ASR Measured OCNs out of the total population of all OCNs in a given month. “ASR Measured OCN” means any OCN with more than [* * *]% fluctuation in the measured ASR in a given month as compared to the preceding three (3) month average of the measured ASR for that OCN; provided, however, that if this Service Level is not met in any given month, then the calculation will not include the months when the Service Level is not met for determining future months and will continue to utilize the previous baseline; provided further, however, that the average must meet or exceed the ASR needed to comply with the FCC’s Rural Call Completion Order. ASR Measured OCNs will be provided on a monthly basis for each Service and each OCN and documented in Schedule 7. Beginning ninety (90) days after Provider receives the final Service Acceptance Notice, Parties shall negotiate in good faith to determine the actual percentage threshold of Measured OCNs with more than a [* * *]% fluctuation of the Measured ASR in a given month as well as resolve the underlying causes of such failure to accurately detect ASR count. Provider shall ensure that the percentage of Measured ASR OCNs Service Level meets or exceeds the levels set forth in the following table; provided, however, that failure by Provider to accurately measure the ASR Service Level shall not excuse Provider’s failure to meet the ASR Service Level, and the Parties shall negotiate in good faith to determine the actual ASR level as well as resolve the underlying causes of low ASR performance. In the event that Provider does not meet the ASR Service Level for reasons other than an Excused Outage, Provider shall provide T-Mobile with a Service Credit based on the total fees or credits for the affected Service due for the relevant calendar month based on the ASR Service Level in that same calendar month as set forth in the following table, which percentages the Parties shall adjust in good faith based upon the first two ASR measurement Reports but no later than ninety (90) days after Provider receives the Service Acceptance Notice for Outbound InterMTA Service:

- (1) Reporting will include ASR measures for T-Mobile traffic summarized by day and by terminating LATA-OCN. In the event that Provider does not meet the

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ASR Service Level for reasons other than an Excused Outage, T-Mobile will be entitled to a Service Credit based on the total fees or credits for the affected Service due for the relevant calendar month based on the Percentage of Measured ASR OCNs with more than 5% Fluctuation in the ASR Percentage in that same calendar month as set forth in the following table:

Percentage of Measured ASR OCNs with more than 5% Fluctuation in the ASR Percentage	Service Credit	Designated Level
[* * *]	[* * *]	
[* * *]	[* * *]	
[* * *]	[* * *]	
[* * *]	[* * *]	[* * *]

(2) **Calculation.** In order to calculate the ASR, Provider will use its CDRs for outbound calls being sent from T-Mobile to Provider. Based upon the CDRs, Carrier will calculate Provider's monthly compliance with the Service Level for ASR by terminating OCN.

(3) Initial Weight: [* * *], not to exceed [* * *].

ix. **Service Outage Response.** Provider shall meet or exceed the MTTR response levels set forth in the Service Event Table. Provider shall provide T-Mobile with a credit equal to [* * *] of the total fees or credits for the affected Service(s) due for the relevant calendar month during which Provider failed to meet the MTTR response level. Initial Weight: [* * *]

D. **Monitoring.** Provider shall monitor the Services' performance twenty-four (24) hours per day, seven (7) days per week, three hundred sixty-five (365) days per year.

E. **Inability to Perform.** Provider shall promptly notify T-Mobile of any inability to timely perform its obligations in Section 12.A; *provided, however*, that such notice will not excuse Provider's failure to perform.

F. **Excused Outages.** Notwithstanding any other provision to the contrary, in no event will Provider have failed to meet any Service Level under this SA if such failure was caused by an Excused Outage. An "Excused Outage" means the period during which there is an outage, unavailability, delay, or other degradation of Service, including any Service Outage or Service Impairment, related to, associated with, or caused by:

- A Force Majeure Event;
- Scheduled Maintenance events;
- The acts, omissions or negligence of any party not under Provider's control, including T-Mobile, an ILEC, CLEC, CMRS provider or an IXC; so long as Provider promptly (but no later than three (3) days from the date upon which Provider becomes aware of such failure) provides T-Mobile with a written notice of such acts, omissions or negligence

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and a description of how this has adversely affected Provider's ability to meet the Service Level;

- iv. T-Mobile failure to release the Service for repair after reasonable request by Provider;
- v. Provider's inability to obtain access required to remedy a defect in service due to the unreasonable actions or inactions of T-Mobile so long as Provider promptly (but no later than three (3) days from the date upon which Provider becomes aware of such failure) provides T-Mobile with a written notice of such action or inaction and a description of how such action or inaction has adversely affected Provider's ability to meet the Service Level; or
- vi. With respect to the Inbound TDM Availability Standard only, any Outage that occurs when the Provider is complying with the mutually agreed upon back-up and alternative routing requirements under this Service Attachment.

13. **All Costs.** Provider represents and warrants that all costs associated with Provider providing the Services set forth in this SA that Provider will seek to recover from T-Mobile are specifically set forth in **Schedule 4**. Provider agrees to pay any and all additional costs at its own expense without seeking reimbursement from T-Mobile.

14. **Tandem Rate Reduction.** During the first twenty four (24) months of the Initial Term, a reduction in an applicable tandem rate that Provider is paid by an IXC for the Services shall be deemed to be a Regulatory Event that has a materially adverse effect on Provider for the purposes of **Section 11.4 (Change in Laws)** of the GTCs. If this SA is terminated pursuant to **Section 11.4 (Change in Laws)** due to a Regulatory Event, whether in the first twenty four (24) months or thereafter, the Parties shall meet to determine whether reasonable adjustments to the Charges during the subsequent Termination Assistance Period are appropriate and, if so, to negotiate such reasonable adjustments.

15. **Schedules.** The Parties may mutually agree to create, or amend, any Schedule explicitly referred to in the GTCs or this SA at any time; *provided, however,* that no new or amended Schedule will become effective until both Parties have signed such new or amended Schedule.

IN WITNESS WHEREOF, Provider and T-Mobile have caused their duly authorized representatives to execute this SA in counterparts in accordance with the terms and conditions of the GTCs:

INTELIQUENT, INC.By: /s/ David LopezName: David LopezTitle: SVP of Global Sales**T-MOBILE USA, INC.**By: /s/ J. Braxton CarterName: J. Braxton CarterTitle: CFO

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Schedule 1

Points of Interconnection

[* * *] The confidential content of this Exhibit 10.2 has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

Schedule 2**Provider NOC Information, Trouble Reporting Procedures,
Contact information and Escalation Procedures****NOC Contact and Escalation Details**PurposeTrouble Reporting ProcessContactsEscalation Matrix

[* * *] The confidential content of this Exhibit 10.2 has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

Purpose

The purpose of this document is to provide the Inteliquent NOC contact and escalation matrix. Please refer to these details in the case you need to report trouble or conduct an escalation.

Trouble Reporting Process

1. Contact Inteliquent NOC at [***] or by email at [***]
2. Please provide the following information:
 - a. Customer name and contact information
 - b. Customer ticket number
 - c. Circuit ID or Office CLLI
 - d. Originating/Destination point code (if applicable)
 - e. IP address (SIP customer only)
 - f. Calling/Called number
 - g. Call example/CDR
 - h. Brief description of the problem
3. You will be provided a trouble ticket number for the tracking process.
4. The Inteliquent NOC will investigate the reported trouble; if the problem can be corrected remotely the NOC will respond to the ticket.
5. If the trouble cannot be corrected remotely, the Inteliquent NOC will immediately notify and dispatch the oncall technician, or open a trouble case with the appropriate transport vendor or farend carrier as needed.
6. Status updates will be provided as they become available.
7. If available, please provide call traces, ladder diagrams, etc...

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NOC Contacts

Level	Contact Details	Telephone	Email
0	Network Control Center (NOC)	(Chicago) [***] (USA & Canada) [***]	[***]
1st	Supervisor/Duty Manager	Request Escalation from NOC	[***]
2nd	Manager NOC (Local Manager)	Request Escalation from NOC	[***]
3rd	Director NOC [***]	[***] Office: [***] Mobile: [***]	[***]
4th	Sr. Director Network Services [***]	[***] Office: [***] Mobile: [***]	[***]
5th	Sr. VP Engineering and Operations [***]	[***] Office: [***] Mobile: [***]	[***]

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NOC Escalation Matrix

Inteliquest NOC Contact details				
Lvl	Contact Details	CRITICAL	HIGH	MEDIUM
1st*	Supervisor / Duty Manager	Event +2 hrs	Event +4hrs	Next Day
2nd	Manager NOC	Event +4 hrs	Event + 8hrs	Next Day
3rd	Director NOC	Event + 8hrs	Event + 12hrs	
4th	Sr. Director Network Service	Event + 12hrs		

•- Outside of business hours, escalation is done through the NOC, which is responsible for contacting the appropriate 2nd level escalation (On Call Duty Manager).

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Schedule 3**T-Mobile NOC Information, Trouble Reporting Procedures,****Contact information and Escalation Procedures****NOC Process: Provider Network Trouble Reporting Process**

Revision	1.1	Issued/Updated	9/8/2011*; 4/17/2012
Principle Author:	[* * *]	Joint Approval:	[* * *], [* * *]

Purpose

1. Provide Provider Network NOC a central point of contact for trouble reporting/notification.

T-MOBILE NOC ROLES AND RESPONSIBILITIES

1. MAINTAIN 24X7X365 MAINTENANCE SUPPORT CENTER.
2. T-MOBILE provides network surveillance on the T-MOBILE infrastructure for services covered within the T-MOBILE/ PROVIDER NETWORK services agreement. This surveillance is reactive and T-MOBILE will make commercially reasonable efforts to notify Provider Network NOC of any customer impacting outages as they are identified.
3. Refer troubles and escalations to supporting T-MOBILE work centers as necessary.

Trouble Reporting and Notification Process**Notification – Status Updates****Provider Network NOC Reporting to T-MOBILE**

Provider Network will report and track all problems via their trouble ticket.

Troubles will be reported to the T-MOBILE NOC where the Trouble resides.

(See Market to NOC association Table Below)

1. Provider Network NOC to use T-Mobile NOC email address for P3 severity/priority issues to report single customer issues and low impact issues
[* * *]

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[* * *]
[* * *]

2. Provider Network NOC will call in to the T-Mobile NOC to report P1 and P2 Critical/Major Issues or Outages

3. Provider Network NOC will provide the following information to the T-Mobile NOC

4. Detailed description of trouble for:

Failed call types –

- No ANI
- Fast Busies
- Number Not In Service
- PDD (Post Dial Delay)
- One Way Audio
- Dead Air
- Dropped Calls
- Translations error

Network issues –

- AIS/LOS
- Trunk Group OOS
- Trunk Group Remote Blocked
- Hardware Failure
- Software Failure

5. Location of issue

- Name and contact information of person reporting trouble
- Priority/severity of trouble (How many lines affected)
- Provider Network Trouble Ticket number

6. T-Mobile NOC Tech will open a T-Mobile trouble ticket and “log” the above information in work log. Provide T-Mobile trouble ticket number to Provider Network and work or route based on reported problem. If issue was reported by email, respond to email with T-Mobile Trouble Ticket.

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7. T-Mobile Issue Routing Information for T-Mobile NOC:

Failed call types –

- No ANI > Route to CFIT
- Fast Busies > Route to CFIT
- Number Not In Service > Route to CFIT
- PDD (Post Dial Delay) > Route to CFIT
- One Way Audio > Route to Market
- Dead Air > Route to Market
- Dropped Calls > Route to Market
- Translations error > Route to CFIT

Network issues –

- AIS/LOS > Route to NOC/Market
- Trunk Group OOS > Route to NOC/Market
- Trunk Group Remote Blocked > Route to NOC/Market
- Hardware Failure > Route to NOC/Market
- Software Failure > Route to NOC/Market

8. The fix agent (Provider Network NOC or T-Mobile Network Operations Center) will keep the other party informed of progress toward the resolution of a trouble ticket whenever a significant change or event occurs, (e.g. when the estimated time of repair changes or the scope of the outage changes (increase of effected customer base)) upon request via an email followed by a telephone call. This information will also be captured in the trouble ticket log. The Subject line of the email will contain both Provider Network and T-Mobile trouble ticket numbers. The body of the email will contain the location and severity/priority of the outage.

Trouble Ticket Closure Process

Tickets will not be closed until both parties agree that the issue has been resolved satisfactorily. After a trouble is resolved, the responsible fix agent will notify the other party via e-mail and by telephone. Both parties will update and document the resolution within their ticketing systems for tracking purposes. If either party is not satisfied with the resolution, or if the service is not working to the customer's satisfaction, the ticket will not be closed and additional testing and/or troubleshooting will be done. If it is discovered that the problem is new or different than reported on the original ticket, that ticket will be closed and Provider Network and T-Mobile will create a new trouble ticket to be worked until resolution. The new trouble ticket and the original trouble ticket must cross reference each other. This will aid both organizations in maintaining a complete and accurate history of the event.

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Customer Escalation Information

Level	Definition	Event/Issue	T-Mobile NOC Goal
Priority 1	Critical <i>Highest Priority</i>	Issue Affecting 1000 or more customers/lines	1. 8 Hour MTTR*
Priority 2	Major <i>High Priority</i>	Issue affecting 101 to 999 customers/lines	1. 12 Hour MTTR* 2. Provide Metro PCS notification as needed. 3. Minimize Escalations to next priority level
Priority 3	Minor <i>Moderate Priority, P1 and P2 events supersede P3</i>	Issues affecting 100 or less customers/lines.	1. 48 Hour MTTR* 2. Provide Metro PCS notification as needed. 3. Minimize Escalations to next priority level

* MTTR is a T-Mobile NOC goal and has not been signed off on by other T-Mobile groups.

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T-Mobile East NOC**Level 1 Support**[***]
[***]**Level 2 Support – On Duty Manager**[***]
[***]**Level 3 Support – Senior Manager**[***] [***]
[***]**T-Mobile South NOC****Level 1 Support**[***]
[***]**Level 2 Support – On Duty Manager**[***]
[***]**Level 3 Support – Senior Manager**[***] - [***]
[***]

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T-Mobile West NOC**Level 1 Support**[* * *]
[* * *]**Level 2 Support – On Duty Manager**[* * *]
[* * *]**Level 3 Support – Senior Manager**[* * *] [* * *]
[* * *]**T-Mobile Level 4 All NOCs****Level 4 Support – Director, Network Operations**[* * *] [* * *]
[* * *]

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The table below identifies T-Mobile Market, Region and NOC alignment.

State	Market Area	Region	NOC
AL	All markets	South	South
AR	Little Rock	Central	South
AZ	Phoenix	West	West
CA	All Markets	West	West
CO	Denver	Central	West
CT	Bloomfield	East	East
DC	Washington	East	East
FL	All Markets	South	South
GA	Atlanta	South	South
HI	Hawaii	West	West
IA	Des Moines	Central	East
ID	Boise	West	West
IL	Chicago	Central	West
IN	Indianapolis	Central	East
KS	Wichita	Central	South
KY	Louisville	Central	South
LA	New Orleans	South	South
MA	Norton (New England)	East	East
MI	Detroit	Central	East
MN	Minneapolis	Central	East
MO	Kansas City	Central	South
MO	St. Louis	Central	East
NC	All Markets	South	South
NJ	Wayne	East	East
NM	Albuquerque	West	West
NV	Las Vegas	West	West

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State	Market Area	Region	NOC
NY	All Markets	East	East
OH	All Markets	Central	East
OK	All Markets	Central	South
OR	Portland	West	West
PA	Central Pennsylvania	East	East
PA	Philadelphia	East	East
PA	Pittsburgh	Central	East
PR	Puerto Rico	South	South
RI	East Providence (New England)	East	East
SC	All Markets	South	South
TN	Knoxville	South	South
TN	Memphis	Central	South
TN	Nashville	Central	South
TX	Austin	South	South
TX	Dallas	South	South
TX	El Paso	West	West
TX	Houston	South	South
TX	San Antonio	South	South
TX	South Texas	South	South
UT	Salt Lake City	West	West
VA	Norfolk	East	East
WA	All Markets	West	West
WI	Milwaukee	Central	West

Provider Network NOC Roles and Responsibilities

1. PROVIDER NETWORK NOC WILL MAINTAIN THE PROVIDER NETWORK SIDE OF THE NETWORK TO THE MSC.
2. 24 x 7 x 365 operations, including holidays.

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3. Abide by the agreed to Escalation procedures and processes
4. PROVIDER NETWORK NOC WILL BE RESPONSIBLE FOR INFRASTRUCTURE AND SCHEDULED MAINTENANCE AND WILL NOTIFY CUSTOMER IN ADVANCE OF PLANNED ACTIVITIES THE CUSTOMER NETWORK OPERATIONS CENTER VIA E-MAIL AND PHONE.
5. IN THE EVENT OF A NETWORK/SERVICE OUTAGE THAT OCCURS WITHIN PROVIDER NETWORK'S AREA OF RESPONSIBILITY THAT IS, OR MAY BECOME CUSTOMER IMPACTING, PROVIDER NETWORK NOC WILL NOTIFY THE T-MOBILE NETWORK OPERATIONS CENTER VIA E-MAIL FOLLOWED BY A TELEPHONE CALL.
THE FOLLOWING INFORMATION WILL BE INCLUDED IN THE CORRESPONDENCE:
 1. PROVIDER NETWORK TROUBLE TICKET NUMBER
 2. DATE
 3. TIME
 4. CONTACT NAME AND PHONE NUMBER (IF APPLICABLE)
 6. TYPE OF FAILURE
 7. ETTR (IF KNOWN)
 8. ANY PREVIOUS TROUBLESHOOTING AND UPDATES FROM THE WORK LOG OF THE TROUBLE TICKET
 9. SEVERITY/PRIORITY LEVEL
 10. ESCALATION STATUS
6. IF NEEDED, A CONFERENCE BRIDGE BETWEEN METRO PCS AND T-MOBILE WILL BE ESTABLISHED. THIS CONFERENCE BRIDGE MAY BE REQUESTED AT ANY TIME BY CONTACTING THE PROVIDER NETWORK NOC.

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Schedule 4
Provider Services Rates and Credits

Service	Rate or Credit							
	Standard	High Outbound IntraMTA Trigger	Low Outbound IntraMTA Trigger	High Wireline Trigger	Low Wireline Trigger	High Rural OCN Trigger	High SWBT Traffic Trigger	Low SWBT Traffic Trigger
Outbound IntraMTA Service	\$[* * *] per MOU	\$[* * *] per Standard MOU; Outbound IntraMTA Service MOU	\$[* * *] per Excess Outbound IntraMTA Service MOU	\$[* * *] per MOU	\$[* * *] per MOU	\$[* * *] per MOU	\$[* * *] per MOU	\$[* * *] per MOU
Inbound IntraMTA Service	\$[* * *] per MOU	\$[* * *] per MOU	\$[* * *] per MOU	\$[* * *] per MOU	\$[* * *] per MOU	\$[* * *] per MOU	\$[* * *] per MOU	\$[* * *] per MOU
Outbound 8YY Service	\$[* * *] per MOU	\$[* * *] per MOU of \$[* * *] per Excess Outbound 8YY Service MOU	\$[* * *] per Standard MOU; Credit of \$[* * *] per Excess Outbound 8YY Service MOU	\$[* * *] per MOU	\$[* * *] per MOU	\$[* * *] per MOU	\$[* * *] per MOU	\$[* * *] per MOU

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Outbound IntraMTA Service	\$[* * *] MOU during the first 12 months of the Term; \$[* *] *] thereafter	\$[* * *] MOU during the first 12 months of the Term; \$[* *] *] thereafter	\$[* * *] MOU during the first 12 months of the Term; \$[* *] *] thereafter	\$[* * *] Term; \$[* *] MOU during the first 12 months of the Term; \$[* *] thereafter	\$[* * *] Standard MOU during the first 12 months of the Term; \$[* *] thereafter	\$[* * *] Standard MOU during the first 12 months of the Term; \$[* *] thereafter	\$[* * *] Standard MOU during the first 12 months of the Term; \$[* *] thereafter	\$[* * *] Standard MOU during the first 12 months of the Term; \$[* *] thereafter
	\$[* * *] MOU during the first 12 months of the Term; \$[* *] *] thereafter	\$[* * *] MOU during the first 12 months of the Term; \$[* *] *] thereafter	\$[* * *] MOU during the first 12 months of the Term; \$[* *] *] thereafter	\$[* * *] Term; \$[* *] MOU during the first 12 months of the Term; \$[* *] thereafter	\$[* * *] Excess Wireline MOU during the first 12 months of the Term; \$[* *] thereafter	\$[* * *] Excess Wireless MOU during the first 12 months of the Term; \$[* *] thereafter	\$[* * *] Rural MOU, the Term; the Term; \$[* *] until July 1, 2016, and then \$[* *] 1, 2017, and then \$[* *] thereafter	\$[* * *] For each Excess first 12 months of first 12 months of Rural MOU, the Term; the Term; \$[* *] thereafter
Inbound Tandem IXC Service	Credit of \$[* * *] per MOU	Credit of \$[* * *] per MOU	Credit of \$[* * *] per MOU	Credit of \$[* * *] Standard MOU; Credit of \$[* * *] Excess SWBT MOU	Credit of \$[* * *] Standard MOU; Credit of \$[* * *] Excess Non- SWBT MOU			
Inbound Wholesale Service	Credit of \$[* * *] per MOU	Credit of \$[* * *] per MOU	Credit of \$[* * *] per MOU	Credit of \$[* * *] per MOU	Credit of \$[* * *] per MOU			

Rate Triggers

- (1) **High Outbound IntraMTA Trigger:** The rates and credits for the High Outbound IntraMTA Trigger apply when the ratio of Outbound IntraMTA Service MOUs to Outbound 8YY Service MOUs is equal to or greater than [* * *].
- (2) **Low Outbound IntraMTA Trigger:** The rates and credits for the Low Outbound IntraMTA Trigger apply when the ratio of Outbound IntraMTA Service MOUs to Outbound 8YY Service MOUs is equal to or less than [* * *].

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(3) **High Wireline Trigger:** The rates and credits for the High Wireline Trigger apply when the Outbound InterMTA Service MOUs sent to wireline destinations are greater than [* * *] of the total Outbound InterMTA Service MOUs.

(4) **Low Wireline Trigger:** The rates and credits for the Low Wireline Trigger apply when the Outbound InterMTA Service MOUs sent to wireline destinations is less than [* * *] of the total Outbound InterMTA Service MOUs.

(5) **High Rural OCN Trigger:** The rates and credits for the High Rural OCN Trigger apply when more than [* * *] of all Outbound InterMTA Service MOUs terminate to Qualified Rural OCNs; *provided, however*, that Outbound InterMTA Service MOUs terminating to the following carriers or their affiliates shall not be deemed to be terminating to a Rural OCN for the purposes of this Rate Adjustment:

- a. [* * *];
- b. [* * *];
- c. [* * *];
- d. [* * *];
- e. [* * *]; and
- f. [* * *].

(6) **High SWBT Traffic Trigger:** The rates and credits for the High SWBT Traffic Trigger apply when the percentage of Inbound Tandem IXC Service MOUs in the SWBT territories of ATT is greater than [* * *] of all Inbound Tandem IXC Service MOUs.

(7) **Low SWBT Traffic Trigger:** The rates and credits for the Low SWBT Traffic Trigger apply when the percentage of Inbound Tandem IXC Service MOUs in the SWBT territories of ATT is less than [* * *] of all Inbound Tandem IXC Service MOUs.

Rate Calculations and Definitions

(1) **Standard MOUs:** Any MOU that does not meet one of the following Rate Definitions.

(2) **Excess Outbound IntraMTA Service MOUs:** The total Outbound IntraMTA Service MOUs in a given month minus [* * *] times the total Outbound 8YY Service MOUs in that month.

(3) **Excess Outbound 8YY Service MOUs:** The total Outbound 8YY Service MOUs in a given month minus [* * *] times the total Outbound IntraMTA Service MOUs in that month.

(4) **Excess Wireline MOUs:** The number of Outbound InterMTA Service MOUs sent to wireline destinations in a given month that are equal to or greater than [* * *] of the total Outbound InterMTA Service MOUs for that same month.

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(5) **Excess Wireless MOUs:** The number of Outbound InterMTA Service MOUs sent to wireless destinations in a given month that are equal to or greater than [***] of the total Outbound InterMTA Service MOUs for that same month.

(6) **Excess Rural MOUs:** The number of Outbound InterMTA Service MOUs sent to a Rural OCN in a given month that are equal to or greater than [***] of the total Outbound InterMTA Service MOUs during that same month.

(7) **Excess SWBT MOUs:** The number of Inbound Tandem IXC Service MOUs to the SWBT territories of ATT in a given month that are equal to or greater than [***] of all Inbound Tandem IXC Service MOUs for that same month.

(8) **Excess Non-SWBT MOUs:** The number of Inbound Tandem IXC Service MOUs to the SWBT territories of ATT in a given month that are equal to or less than [***] of all Inbound Tandem IXC Service MOUs for that same month.

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Schedule 5

**Outbound IntraMTA Service
NPA-NXX Rate Schedule**

File Name "T-Mobile_LTS_Routing_order_05_01_2015.zip" that is 7mb that the Parties confirmed via e-mail on June 24, 2015.

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Schedule 6**Fraud Prevention****1. Introduction**

This Fraud Prevention Exhibit sets forth the procedures and methodologies to be followed by the Parties with respect to the term of PSTN SA respect to fraud prevention and detection. Provider plans to use the Equinox Telelink analytics reporting system, which via its Dynamic Fraud Detect functionality, detects and reports on fraud on a continuous basis.

Specifically, Provider will perform the following fraud detection functionality.

2. Fraud Detection Overview:

- A. Provider Tools. Provider will implement tools in its network designed to detect calls that are fraudulent (the "Fraud Tools"). Such Fraud Tools include systems provided by third parties (e.g., Equinox, Freeswitch call switching systems) that are in turn integrated with Provider's Sonus switching network to detect, manage and or block fraudulent traffic.

As of the SA Effective Date, T-Mobile has reviewed the Provider Fraud Tools and the associated deployment timeline that will be provided in accordance with this Schedule.

During the development and deployment of the Fraud Tools, T-Mobile and Provider have agreed to jointly develop fraud detection algorithms to ensure they meet T-Mobile's detection requirements. T-Mobile will also work with Provider on an ongoing basis to continuously develop the detection algorithms to ensure they adequately detect and contain fraudulent traffic during the Term.

- B. The Provider will use the Fraud Tools to identify the destination or originating number that is associated with fraudulent traffic flow and depending on the nature of the fraudulent traffic automatically trigger the following call flow intervention or call blocking treatment options, at T-Mobile's sole discretion:

- i. **Call Blocking:** Provider's switching system will automatically apply the blocking, options will be provided to block all calls or call gap to restrict volume of traffic to/from the destination or originating numbers associated with the fraudulent traffic.
- ii. **Call Whisper.** IVR functionality will be inserted into a whisper message (i.e., the whisper message could be associated with the call randomizer or call blocking functions, or could be another message directed by T-Mobile informing the calling or called party of certain information).
- iii. **Call Randomizer.** IVR functionality will be inserted into call flow to by asking the calling party to enter a randomly generated multi-digit code to detect if suspected fraudulent call is originating from a person, if affirmed the call will then be terminated to called, calls not originating from a person will be disconnected.

Page 45

[* * *] The confidential content of this Exhibit 10.2 has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

The above capability may additionally include the capability of these various functions on an end user basis (i.e., to support the call blocking functionality as directed by individual end users of T-Mobile) as mutually agreed by the Parties.

C. Provider plans to deploy the above Fraud detection functionality to manage and contain fraudulent traffic originating or terminating within the T-Mobile network by July 30, 2015.

Page 46

[* * *] The confidential content of this Exhibit 10.2 has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

Schedule 7**ASR Rate for each Service and each OCN**

To be completed as set forth in this SA

Page 47

[* * *] The confidential content of this Exhibit 10.2 has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

EXHIBIT D

APPENDIX C

Reporting Template

Covered Provider X		Month 1												Total												
		Interstate						Intrastate						Interstate						Intrastate						
State	Rural	Calls Attempted	Answered	Busy	Ring No Answer	Unassigned Number	% Calls Answered	Calls Attempted	Answered	Busy	Ring No Answer	Unassigned Number	% Calls Answered	Calls Attempted	Answered	Busy	Ring No Answer	Unassigned Number	% Calls Answered	Calls Attempted	Answered	Busy	Ring No Answer	Unassigned Number	% Calls Answered	Completed
AA	OCNA	A.AAA	B.BBB	C.CCC	D.DDD	E.EEE	YY.Y%	ZZZ%	A.AAA	B.BBB	C.CCC	D.DDD	E.EEE	YY.Y%	ZZZ%	A.AAA	B.BBB	C.CCC	CC,CCC	DD,DDD	EE,EEE	EE,EEE	DD,DDD	EE,EEE	YY.Y%	ZZZ%
AA	OCNB	A.AAA	B.BBB	C.CCC	D.DDD	E.EEE	YY.Y%	ZZZ%	A.AAA	B.BBB	C.CCC	D.DDD	E.EEE	YY.Y%	ZZZ%	A.AAA	B.BBB	C.CCC	CC,CCC	DD,DDD	EE,EEE	EE,EEE	DD,DDD	EE,EEE	YY.Y%	ZZZ%
AA	OCNC	A.AAA	B.BBB	C.CCC	D.DDD	E.EEE	YY.Y%	ZZZ%	A.AAA	B.BBB	C.CCC	D.DDD	E.EEE	YY.Y%	ZZZ%	A.AAA	B.BBB	C.CCC	CC,CCC	DD,DDD	EE,EEE	EE,EEE	DD,DDD	EE,EEE	YY.Y%	ZZZ%
AA	OCND	A.AAA	B.BBB	C.CCC	D.DDD	E.EEE	YY.Y%	ZZZ%	A.AAA	B.BBB	C.CCC	D.DDD	E.EEE	YY.Y%	ZZZ%	A.AAA	B.BBB	C.CCC	CC,CCC	DD,DDD	EE,EEE	EE,EEE	DD,DDD	EE,EEE	YY.Y%	ZZZ%
AA	OCNE	A.AAA	B.BBB	C.CCC	D.DDD	E.EEE	YY.Y%	ZZZ%	A.AAA	B.BBB	C.CCC	D.DDD	E.EEE	YY.Y%	ZZZ%	A.AAA	B.BBB	C.CCC	CC,CCC	DD,DDD	EE,EEE	EE,EEE	DD,DDD	EE,EEE	YY.Y%	ZZZ%
BB	OCNF	A.AAA	B.BBB	C.CCC	D.DDD	E.EEE	YY.Y%	ZZZ%	A.AAA	B.BBB	C.CCC	D.DDD	E.EEE	YY.Y%	ZZZ%	A.AAA	B.BBB	C.CCC	CC,CCC	DD,DDD	EE,EEE	EE,EEE	DD,DDD	EE,EEE	YY.Y%	ZZZ%
BB	OCNG	A.AAA	B.BBB	C.CCC	D.DDD	E.EEE	YY.Y%	ZZZ%	A.AAA	B.BBB	C.CCC	D.DDD	E.EEE	YY.Y%	ZZZ%	A.AAA	B.BBB	C.CCC	CC,CCC	DD,DDD	EE,EEE	EE,EEE	DD,DDD	EE,EEE	YY.Y%	ZZZ%
ZZ	OCNZ	A.AAA	B.BBB	C.CCC	D.DDD	E.EEE	YY.Y%	ZZZ%	A.AAA	B.BBB	C.CCC	D.DDD	E.EEE	YY.Y%	ZZZ%	A.AAA	B.BBB	C.CCC	CC,CCC	DD,DDD	EE,EEE	EE,EEE	DD,DDD	EE,EEE	YY.Y%	ZZZ%
Rural [Total]		AAA,AAA	BBB,BBB	CCC,CCC	DDD,DDD	EEE,EEE	YY.Y%	ZZZ%	AAA,AAA	BBB,BBB	CCC,CCC	DDD,DDD	EEE,EEE	YY.Y%	ZZZ%	AAA,AAA	BBB,BBB	CCC,CCC	CC,CCC	DD,DDD	EE,EEE	EE,EEE	DD,DDD	EE,EEE	YY.Y%	ZZZ%
Nonrural [Total]		AAA,AAA,BBB,BBB	BBB,BBB	CCC,CCC	DDD,DDD	EEE,EEE	YY.Y%	ZZZ%	AAA,AAA,BBB,BBB	BBB,BBB	CCC,CCC	DDD,DDD	EEE,EEE	YY.Y%	ZZZ%	AAA,AAA	BBB,BBB	CCC,CCC	CC,CCC	DD,DDD	EE,EEE	EE,EEE	DD,DDD	EE,EEE	YY.Y%	ZZZ%

Shaded areas are provided on, or calculated by, the template.

% Calls Answered is calculated as $\frac{\text{B.BBB}}{(\text{A.AAA} \cdot \text{E.EEE})}$ % Calls Completed is calculated as $\frac{(\text{B.BBB} + \text{C.CCC} + \text{D.DDD})}{(\text{A.AAA} \cdot \text{E.EEE})}$

Call attempts are generally categorized as follows based on ISUP Cause values and corresponding SIP Response messages

Answered = calls signaled back with ISUP 16 & 31 and SIP BYE & CANCEL

Busy = call attempts signaled back with ISUP 17 and SIP 486

Ring No Answer = call attempts signaled back as ISUP 18 & 19 and SIP 408 & 404

Unassigned Number = call attempts signaled back as ISUP 1 and SIP 404

EXHIBIT E

August 26, 2015

FILED ELECTRONICALLY

Sharon Bowers, Acting Chief
Consumer Inquiries and Complaints Division
Consumer and Governmental Affairs Bureau
Federal Communications Commission
445 12th Street, SW Room CY-B514
Washington, D.C. 20554

Re: (b) (6)
Your File No. 440552
T-Mobile Account No. (b) (6)

Dear Ms. Bowers:

T-Mobile USA, Inc. ("T-Mobile") is in receipt of your correspondence dated August 6, 2015, regarding the above-referenced account.

Our records indicate that prior to August 4, 2015, (b) (6) was on the *Simple Choice Unlimited Talk and Text* family plan, which included three lines of service, mobile numbers ending in 4201, 4221, and 0035 for \$90.00 per month. Furthermore, on August 4, 2015, (b) (6) activated the additional mobile number ending in 6813. At that time, he elected to change his rate plan to the promotional *Simple Choice Unlimited Talk, Text, and 2.5 Gigabytes of Data* family plan for \$100.00 per month.

On July 26, 2015, (b) (6) contacted Technical Support to report that he was unable to access data on the mobile number ending in 6813. At that time, a review of our account records confirmed (b) (6) to have been using the designated SIM card for the mobile number in an Apple iPad Mini. (b) (6) was advised that T-Mobile currently offers rate plans which cater separately to the use of voice lines or mobile internet lines. As (b) (6) was utilizing a voice line SIM card in his Apple iPad Mini tablet he was advised that he would be unable to continue to utilize the data services with his tablet as this is not the intended use of the voice line SIM card he selected.

In an effort to resolve this matter amicably, T-Mobile has offered to update (b) (6) rate plan for the mobile number ending in 6813 in order to ensure (b) (6) is able to utilize his service on his Apple iPad Mini with the appropriate rate plan. Regrettably, upon speaking with (b) (6) on August 7, 2015, he has declined to make any changes, to his current rate plan. As (b) (6) has elected not to change his rate plan for mobile number ending in 6813, it is important to note that his service may not function as expected.

Nevertheless, if (b) (6) would like to discuss his options to change his current rate plan, he may contact me directly at the number listed below.

Based upon the foregoing, we respectfully request that this complaint against T-Mobile be closed.

Thank you for bringing this matter to our attention. If you have any questions, please do not hesitate to contact me at the address listed below or toll free at 877-290-6323 ext. 341-8060.

Very truly yours,

T-MOBILE USA, INC.

Emilio Shields
Executive Response

cc: (b) (6)
[REDACTED].
Western, FL 33332

November 23, 2016

FILED ELECTRONICALLY

Sharon Bowers, Acting Chief
Consumer Inquiries and Complaints Division
Consumer and Governmental Affairs Bureau
Federal Communications Commission
445 12th Street, SW Room CY-B514
Washington, D.C. 20554

Re: (b) (6) (b) (6)

T-Mobile Account Holder: (b) (6) (b) (6)

Your File No. 1282769

T-Mobile Account No. (b) (6)

Dear Ms. Bowers:

T-Mobile USA, Inc. (“T-Mobile”) is in receipt of your correspondence dated October 24, 2016, regarding the above-referenced account. As (b) (6) (b) (6) is not an authorized user on the account, a courtesy copy of this letter will be directed to the account holder, (b) (6) (b) (6)

T-Mobile regrets any concerns (b) (b) (6) may have with T-Mobile’s “Binge On” offering. In January, 2016, T-Mobile posted an open letter to consumers about Binge On in which T-Mobile again advocated for the concept of Net Neutrality and reiterated support for an open and free internet experience for all consumers. Binge On is intended to stretch the data allotment of customers who subscribe to a limited or capped bucket of data. When Binge On is enabled, all video, regardless of source, is optimized for mobile device viewing. Putting aside the 38+ services for which we provide free data for video through Binge On – this “stretching” of a customer’s data bucket is estimated to allow them to watch up to 3x more video from their data plan than before. Please note that (b) (b) (6) is under no obligation to have Binge On enabled and should he need assistance to disable it, (b) may contact me at the number below. Alternatively, (b) (b) (6) can disable it by dialing #263# from his handset, and then dialing #266# from the handset to re-enable it. There are also instructions on our website and within (b) (b) (6) myT-Mobile.com application for turning the feature on and off.

In regards to (b) (b) (6) concerns regarding file upload and download speeds, please be advised that T-Mobile is unable to guarantee data speeds in any location. There is no way to predict an exact speed with the variety of factors that can affect a customer’s experience. The device speeds may vary depending on the device operating system, processor, battery life, running applications, peak theoretical speeds, and distance from the cell site. Additionally, customers may experience different results based on location and number of other customers on the network. T-Mobile has verified the address on (b) (b) (6) account and, based on the coverage map, can confirm that (b) account address is in a good coverage area with no known issues.

T-Mobile records indicate that (b) (b) (6) line ending in (b) is currently subscribed to a data plan that provides 6 gigabytes (“GB”) of high speed data after which (b) data speed may be

slowed. Our review of (b) (b) (6) usage indicates that (b) has not approached or exceeded any amount of data usage that would result in de-prioritization or slowing of (b) service during times of network congestion. Upon reviewing the last three months from August 14, 2016 to November 13, 2016, (b) (b) (6) uses an average of 2.8 GB of data per billing cycle.

In addition, T-Mobile records also indicate that (b) (b) (6) is using a Non-T-Mobile branded Life One XL device. It should be noted that while an unlocked Life One XL from another carrier will work on the T-Mobile network, we are unable to guarantee the full functionality of that device based on certain hardware or software incompatibilities between carriers. Historically, the basic functions of the unlocked Life One XL worked on our network; however, certain advanced features may work sporadically or not at all.

For customers with non-T-Mobile devices who experience issues with their device, T-Mobile does attempt basic troubleshooting; however, it should be noted that our troubleshooting capabilities with non-T-Mobile devices is limited. Once our troubleshooting options are exhausted, T-Mobile refers customers with non-T-Mobile devices to the manufacturer of their device.

T-Mobile believes that the Binge On offer is consistent with open internet rules and is a positive and innovative service. T-Mobile supports an open and free internet experience for all consumers. Please know that T-Mobile is constantly working to make our services better for our customers and appreciates the information provided by (b) (b) (6)

Based upon the foregoing, we respectfully request that this complaint against T-Mobile be closed.

Thank you for bringing this matter to our attention. If you have any questions, please do not hesitate to contact me at the address listed below or toll free at 877-290-6323 ext. 341-7974.

Very truly yours,

T-MOBILE USA, INC.

Amor Marie
Executive Response

cc: (b) (6) (b) (6)
(b) (b) (6) (b) (6)
Mastic Beach, NY 11951

December 9, 2016

FILED ELECTRONICALLY

Sharon Bowers, Acting Chief
Consumer Inquiries and Complaints Division
Consumer and Governmental Affairs Bureau
Federal Communications Commission
445 12th Street, SW Room CY-B514
Washington, D.C. 20554

Re: (b) (6) (b) (6)
Your File No. 1309120
T-Mobile Account No. (b) (6)

Dear Ms. Bowers:

T-Mobile USA, Inc. ("T-Mobile") is in receipt of your correspondence dated November 10, 2016, regarding the above-referenced account.

T-Mobile regrets any concerns (b) (b) (6) is experiencing with his T-Mobile data. T-Mobile records confirm that as of November 6, 2016, (b) (b) (6) has disabled his Binge On feature which, as you know, is our answer to assist customers with growing data needs. Binge On is powered by really cool technology built right into our network. This technology optimizes video for mobile screens at 480p, so it is more reliable and consistent, looks great, and uses up less data! In fact, video with Binge On typically streams at DVD quality and without using a drop of high-speed data. That said, Binge On is a feature that our customers can control at all times. It can be deactivated and reactivated anytime for each person on their account via My T-Mobile.com, either with the application or the online website.

Please know that as technical integration is necessary between T-Mobile and the video streaming services, not all video streaming sites are covered by Binge On. A complete list of streaming partners can be found at T-Mobile.com. Regretfully, (b) (b) (6) continues to have issues with (b) data using a third party gaming application even when the Binge On has been disabled and we confirmed that it is not related to our Binge On feature.

However, in an effort to amicably resolve this matter, our T-Mobile Engineering team is diligently working with (b) (b) (6) in resolving (b) concerns and we will keep following up to find (b) a resolution. T-Mobile regrets any inconvenience to (b) (b) (6) regarding this matter.

Based upon the foregoing, we respectfully request that this complaint against T-Mobile be closed.

Thank you for bringing this matter to our attention. If you have any questions, please do not hesitate to contact me at the address listed below or toll free at 877-290-6323 ext. 341-7955.

Very truly yours,

T-MOBILE USA, INC.

Ligia Montoya
Executive Response

cc: (b) (6) (b) (6)
(b) (b) (6) (b)
Pensacola, FL 32526-8065

December 20, 2016

FILED ELECTRONICALLY

Sharon Bowers, Acting Chief
Consumer Inquiries and Complaints Division
Consumer and Governmental Affairs Bureau
Federal Communications Commission
445 12th Street, SW Room CY-B514
Washington, D.C. 20554

Re: (b) (6) (b) (6)
Your File No. 1334410
T-Mobile Account No. (b) (6)

Dear Ms. Bowers:

T-Mobile USA, Inc. ("T-Mobile") is in receipt of your correspondence dated December 1, 2016, regarding the above-referenced informal complaint filed by T-Mobile customer, (b) (b) (6). T-Mobile appreciates this opportunity to respond to (b) (b) (6) complaint.

T-Mobile is sorry to hear that (b) (b) (6) has concerns about our new and exciting *T-Mobile ONE* offer. *T-Mobile ONE* as well as to hear that the performance of T-Mobile's data network has, at times, not lived up to (b) (b) (6) expectations.

T-Mobile's records confirm that (b) (b) (6) activated his T-Mobile account on November 7, 2016, with mobile number ending in (b) (6). Further review confirms that (b) (b) (6) is currently subscribed to *T-Mobile ONE*. *T-Mobile ONE* gives customers unlimited talk and text as well as a variety of Un-carrier benefits including *Simple Global, Stateside International Unlimited Texting*, and *Mobile Without Borders*.

On all plans, during congestion the top 3% of data users (currently over 26 GB per month) may notice reduced speeds until the next bill cycle. For the top 3% of data users, the majority of data usage must be on a smartphone. Smartphone usage is prioritized over tethering usage. See <https://www.t-mobile.com/company/company-info/consumer/internet-services.html> for data management details.

While it is T-Mobile's goal and commitment to provide the fastest data speeds in the wireless industry, there are times and places where network speeds can be slowed significantly because network loading is high enough to exceed the available capacity. In such circumstances, T-Mobile must take affirmative steps to manage the network for the best overall experience of the most customers. T-Mobile wants customers to use and enjoy our services as much as possible, but successful management of our network requires us to prioritize the data usage of customers when the demands for network capacity outstrip the available capacity.

Further review indicates that data usage on (b) (b) (6) account is very high relative to other customers. In fact, (b) (b) (6) account is among the highest data usage accounts on T-

Mobile's network. T-Mobile's review of (b) (b) (6) account, we have confirmed that during the previous billing cycle a total of 36,829.00 megabytes (36.829 GB) of data were used.

As a very heavy user of T-Mobile services, (b) (b) (6) usage may be prioritized below that of other customers in order to facilitate a fair allocation of network resources among all customers when and where network loading is high enough to exceed the available capacity. Where the network is lightly loaded, a very heavy user, such as (b) (b) (6) will likely notice little, if any, affect from this lower priority. However, at times and places where the network is heavily loaded, a very heavy user, such as (b) (b) (6) can expect to see some material reduction in data speeds.

The number of locations where this condition arises is very small and T-Mobile constantly works to improve the network capacity in these areas, but there are limits on how much spectrum capacity is available. The lower speed that results from heavy network loading is temporary. When network loading goes down or a very heavy user moves to any area that is less heavily loaded, the user's speeds will go up.

We understand that if (b) (b) (6) regularly uses our service in a location which is often heavily loaded, T-Mobile may not be able to provide the service that is best for (b) (b) (6) high amount of data usage. Further review confirms that (b) (b) (6) is not financing T-Mobile equipment through T-Mobile and he does not have a service contract with us and he may cancel his service without incurring on an early termination fee.

Of course, if (b) (b) (6) does not wish to cancel (b) T-Mobile service, (b) is not required to do so. (b) (b) (6) is welcome to continue (b) service and account with T-Mobile, understanding that (b) may continue to experience reduced data speeds in places where the network is heavily loaded and his amount of data usage is disproportionately high.

Based upon the foregoing, we respectfully request that this informal complaint against T-Mobile be closed.

Thank you for bringing this matter to our attention. If you have any questions, please do not hesitate to contact me at the address listed below or toll free at 877-290-6323 ext. 341-8016.

Very truly yours,

T-MOBILE USA, INC.

Maggie Rose
Executive Response

cc: (b) (b) (6)
(b) (b) (6)
Oklahoma City, OK 73112

December 30, 2016

FILED ELECTRONICALLY

Sharon Bowers, Acting Chief
Consumer Inquiries and Complaints Division
Consumer and Governmental Affairs Bureau
Federal Communications Commission
445 12th Street, SW Room CY-B514
Washington, D.C. 20554

Re: (b) (b) (6)
T-Mobile Account Holder: (b) (6) (b) (6)
Your File No. 1331949
T-Mobile Account No. (b) (6)

Dear Ms. Bowers:

T-Mobile USA, Inc. (“T-Mobile”) is in receipt of a letter dated November 30, 2016, from (b) (b) (6) regarding the above-referenced account. Please be advised that T-Mobile records indicate the account holder of record is (b) (6) (b) (6). As (b) (b) (6) is not an authorized user on the account a courtesy copy of this letter will be directed to (b) (6) (b) (6).

T-Mobile is sorry to hear that (b) (b) (6) has concerns about our new and exciting *T-Mobile ONE* offer. *T-Mobile ONE* represents a fundamental change to current carrier data plans and pricing, allowing customers unlimited access to talk, text and high speed mobile data – so they can use data as they please, when they please, without worrying about data usage or high speed “buckets” on their plans.

We would like to address (b) (b) (6) specific complaint regarding the high-definition (“HD”) video add-on fee. Instead of addressing the growing demand for video by charging more, T-Mobile originally designed *T-Mobile ONE* as an innovative solution that actually provides a substantial discount to its customers. Because most T-Mobile customers view video on small screens where HD offers few or no advantages over the standard-definition (“SD”) quality that T-Mobile is providing under *T-Mobile ONE*, this offering was seen as a great fit for the majority of customers. Those customers are able to choose SD video in exchange for a substantial discount, while continuing to enjoy an unlimited experience. This also frees up network resources and improves network performance for all customers.

However, since our original announcement, we have heard from some customers that access to HD quality video is important for them. Therefore, as we always do, we listened to the feedback from our customers and, on Monday, August 29, 2016, we announced new HD video options to choose from. First, we will be offering *unlimited* HD Day Passes to *T-Mobile ONE* customers - for just \$3.00 per day – beginning in October. Second, T-Mobile announced *T-Mobile ONE* Plus for power users who want to stream unlimited HD video and get faster mobile hotspot data speeds, including when traveling. T-Mobile is the **first and only** wireless provider to offer unlimited high speed mobile hotspot data.

For an additional \$25.00 per month, per line of service, customers can upgrade to *T-Mobile ONE Plus* and receive unlimited mobile hotspot data, unlimited HD data passes and twice the browsing speeds when traveling abroad. More information about *T-Mobile ONE* and *T-Mobile ONE Plus* can be found at: <https://newsroom.t-mobile.com/news-and-blogs/t-mobile-one-amped.html>.

(b) (b) (6) also expressed concern that T-Mobile ONE is a violation of the FCC's Open Internet rules. T-Mobile believes that the *T-Mobile ONE* and *T-Mobile ONE Plus* offers are consistent with Open Internet rules and are positive and innovative services that let the customer choose from of a menu of options when they sign up for service. For example, under *T-Mobile ONE*, the customer chooses their video streaming experience – SD at a substantial discount, or HD either with data passes or as part of the *T-Mobile ONE Plus* offering. We have given the customer additional tools and options to enhance their T-Mobile experience, not taken anything away. Offering customers the ability to choose those plan features that matter the most to them at the right price is exactly the type of innovative offer that the Open Internet rules permit.

To learn more about T-Mobile's Open Internet practices, please visit <https://www.t-mobile.com/company/company-info/consumer/internet-services.html>.

Based upon the foregoing, we respectfully request that this complaint against T-Mobile be closed.

Thank you for bringing this matter to our attention. If you have any questions, please do not hesitate to contact me at the address listed below or toll free at 877-290-6323 ext. 341-8067.

Very truly yours,

T-MOBILE USA, INC.

Sharon Baca
Executive Response

cc: (b) (6) (b) (6)
(b) (b) (6) (b)
Patchogue, NY 11772-1544



January 3, 2017

FILED ELECTRONICALLY

Sharon Bowers, Acting Chief
Consumer Inquiries and Complaints Division
Consumer and Governmental Affairs Bureau
Federal Communications Commission
445 12th Street, SW Room CY-B514
Washington, D.C. 20554

Re: (b) (6) (b) (6)
Your File No. 1356643
T-Mobile Account No. (b) (6)

Dear Ms. Bowers:

T-Mobile USA, Inc. ("T-Mobile") is in receipt of your correspondence dated December 20, 2016, regarding the above-referenced account. We are pleased to report that we have resolved (b) (b) (6) concerns to (b) satisfaction.

T-Mobile regrets any concerns (b) (b) (6) experienced with the functionality of (b) T-Mobile ONE Plus service. T-Mobile ONE represents a fundamental change to current carrier data plans and pricing, allowing customers unlimited access to talk, text and high speed mobile data – so they can use data as they please, when they please, without worrying about data usage or high speed “buckets” on their plans. Instead of addressing the growing demand for video by charging more, T-Mobile originally designed T-Mobile ONE as an innovative solution that actually provides a substantial discount to its customers. Because most T-Mobile customers view video on small screens where HD offers few or no advantages over the standard-definition (“SD”) quality that T-Mobile is providing under T-Mobile ONE, this offering was seen as a great fit for the majority of customers. Those customers are able to choose SD video in exchange for a substantial discount, while continuing to enjoy an unlimited experience. This also frees up network resources and improves network performance for all customers.

However, since our original announcement, we have heard from some customers that access to HD quality video is important for them. Therefore, as we always do, we listened to the feedback from our customers and, on August 29, 2016, we announced new HD video options to choose from. First, we offered unlimited HD Day Passes to T-Mobile ONE customers - for just \$3.00 per day. Second, T-Mobile announced T-Mobile ONE Plus for power users who want to stream unlimited HD video and get faster mobile hotspot data speeds, including when traveling. T-Mobile is the first and only wireless provider to offer unlimited high speed mobile hotspot data. For an additional \$25.00 per month, per line of service, customers like (b) (b) (6) can upgrade to T-Mobile ONE Plus and receive unlimited mobile hotspot data, unlimited HD data passes and twice the browsing speeds when traveling abroad.

In regard to (b) (b) (6) concerns regarding “reprioritizing”, our goal and commitment to all of our customers, like (b) (b) (6) is to provide the fastest data speeds in the wireless industry and provide best network experience for all of our customers; however, there are times and places where network speeds can be slowed significantly because network loading is high enough to exceed the available capacity based on competing customer demands. In such circumstances, T-Mobile must take affirmative steps to manage the network for the best overall experience for our customers. T-Mobile wants customers, like (b) (b) (6) to use and enjoy our services as much as possible and successful management of our network

requires us to take steps to optimize overall network performance and maintain a consistent quality experience for our customers. As a result we may temporarily reduce data throughput speeds for a small fraction of customers who use a disproportionate amount of bandwidth. Additional information about this process can be found in (b) (b) (6) Terms and Conditions of Service.

T-Mobile's records indicate that (b) (b) (6) data usage is at high levels relative to other customers. Upon review of (b) (b) (6) account, our records reflect that from November 20, 2016, through December 19, 2016, (b) (b) (6) had used approximately 188 gigabytes ("GB") of 4G/LTE data so (b) usage may have been prioritized. As a result, and pursuant to our disclosed network management practices, (b) (b) (6) data usage may at times have been prioritized below that of other customers in order to facilitate a fair allocation of network resources among all customers when and where network loading is high enough to exceed the available capacity. Where the network is lightly loaded, a very heavy user, such as (b) (b) (6) will likely notice little, if any, affect from this lower priority. However, at times and places where the network is heavily loaded, a very heavy user will see some reduction in data speeds. It should be noted that this is in no way related to his selected data feature.

Please be advised that under no circumstances does T-Mobile limit when customers like (b) (b) (6) can enable their HD data passes with a paid subscription to T-Mobile One Plus. Please be assured that T-Mobile strives to provide world-class service to all of our customers on each and every contact. We also make every effort to provide complete and accurate information to our customers. We apologize if any T-Mobile employee failed in any way to display that during (b) (b) (6) recent contact with our Customer Care

On December 20, 2016, T-Mobile spoke to (b) (b) (6) and advised of the above. In addition T-Mobile advised (b) (b) (6) how to enable (b) HD data pass via his online My T-Mobile account and (b) was successfully able to enable (b) HD data pass. As a courtesy to (b) (b) (6) T-Mobile issued a one-time credit in the amount of \$50.00 to (b) (b) (6) and as such, (b) account now reflects a credit balance in the amount of \$50.00. (b) (b) (6) was satisfied with the resolution and did not have any additional concerns.

Based upon the foregoing, we respectfully request that this complaint against T-Mobile be closed.

Thank you for bringing this matter to our attention. If you have any questions, please do not hesitate to contact me at the address listed below or toll free at 877-290-6323 ext. 341-8043.

Very truly yours,

T-MOBILE USA, INC.

Robert Ramirez
Executive Response

cc: (b) (6) (b) (6)
(b) (b) (b)
Estancia, NM 87016

January 9, 2017

FILED ELECTRONICALLY

Sharon Bowers, Acting Chief
Consumer Inquiries and Complaints Division
Consumer and Governmental Affairs Bureau
Federal Communications Commission
445 12th Street, SW Room CY-B514
Washington, D.C. 20554

Re: (b) (6) (b) (6)
T-Mobile Account Holder: (b) (6) (b) (6)
Your File No. 1342441
T-Mobile Account No. (b) (6)

Dear Ms. Bowers:

T-Mobile USA, Inc. ("T-Mobile") is in receipt of your correspondence dated December 7, 2016, from (b) (6) (b) (6) regarding the above-referenced account. Please be advised that T-Mobile records indicate the account holder of record is (b) (6) (b) (6). T-Mobile has determined that (b) (6) (b) (6) and (b) (6) (b) (6) are one and the same.

T-Mobile regrets any concerns Mr. (b) (6) experienced in regards to (b) data speeds. We are sorry that the performance of T-Mobile's data network has, at times, not lived up to (b) (b) (6) expectations. While it is T-Mobile's goal and commitment to provide the fastest data speeds in the wireless industry, there are times and places where network speeds can be slowed significantly because network loading is high enough to exceed the available capacity. In such circumstances, T-Mobile must take affirmative steps to manage the network for the best overall experience of the most customers. T-Mobile wants customers to use and enjoy our services as much as possible, but successful management of our network requires us to prioritize the data usage of customers when the demands for network capacity outstrip the available capacity.

T-Mobile's records indicate that data usage on (b) (b) (6) account is very high relative to other customers. In fact, (b) (b) (6) account is among the highest data usage accounts on T-Mobile's network.

As a very heavy user of T-Mobile services, (b) (b) (6) usage may be prioritized below that of other customers in order to facilitate a fair allocation of network resources among all customers when and where network loading is high enough to exceed the available capacity. Where the network is lightly loaded, a very heavy user, such as (b) (b) (6) will likely notice little, if any, affect from this lower priority. However, at times and places where the network is heavily loaded, a very heavy user, such as (b) (b) (6) can expect to see some material reduction in data speeds.

The number of locations where this condition arises is very small and T-Mobile constantly works to improve the network capacity in these areas, but there are limits on how much spectrum capacity is available. The lower speed that results from heavy network loading is temporary. When network loading goes down or a very heavy user moves to any area that is less heavily loaded, the user's speeds will go up.

We understand (b) if (b) (b) (6) regularly uses our service in a location which is often heavily loaded, T-Mobile may not be able to provide the service that is best for (b) (b) (6) high amount of data usage.

Thus, if (b) (b) (6) believes that (b) high data usage may continue to be a concern, T-Mobile is willing to allow (b) (b) (6) to cancel (b) T-Mobile service and any Equipment Installment Plan ("EIP") obligations (b) may owe on (b) T-Mobile devices. If (b) (b) (6) chooses to cancel (b) service and EIP obligations, T-Mobile will refund any EIP payments (b) (b) (6) has already made on (b) devices and waive any remaining installment obligations, provided only that (b) (b) (6) returns his devices to T-Mobile. Additionally, if (b) (b) (6) was eligible for a T-Mobile offer to reimburse (b) early termination fees with another provider when (b) activated service with T-Mobile, we will continue to honor such reimbursement offer after cancellation of his service.

Of course, if (b) (b) (6) does not wish to cancel (b) T-Mobile service, (b) is not required to do so. (b) (b) (6) is welcome to continue (b) service and account with T-Mobile, understanding that (b) may continue to experience reduced data speeds in places where the network is heavily loaded and (b) amount of data usage is disproportionately high.

It is important to (b) that on November 19, 2015, T-Mobile launched Binge On, our answer to address customers' growing demand for mobile video. Video streaming has become the #1 way many people use data. Binge On is powered by technology built into our network that optimizes all detectable streaming video for mobile screens at DVD quality (480p or better), including YouTube, so it is more reliable and consistent, provides a satisfying viewing experience, and uses up less data.

(b) (b) (6) also indicates concerns that (b) (6) On was automatically enabled. At T-Mobile, we strive to default all of our new and exciting customer benefits to "ON." We do not like to make customers dig around to find great new benefits -- that is something a traditional carrier would do when they really hop, the consumer won't take any action. Our feeling is that if people saw our TV commercials about Binge On, then went to watch ten hours of video expecting it to be free, and only THEN learned that they needed to go into their settings to activate this new benefit, it would create more pain points than we were trying to eliminate. Thus, everyone on an eligible plan was given Binge On from the beginning. We regret any inconvenience to (b) (b) (6)

T-Mobile records confirm that (b) (b) (6) account is a Business/Retail account type with eight voice lines of service. (b) (b) (6) account is subscribed to the *T-Mobile One @ Work* rate plan. It is important to note that as part of this rate plan Binge On is a built in feature and therefore, is unable to be disabled. Should (b) (b) (6) wish to have the option of disabling Binge On (b) may choose to change (b) account to an eligible rate plan.

(b) (b) (6) may contact T-Mobile Business Care at 800-375-1126 for assistance in choosing and changing (b) rate plan.

Based upon the foregoing, we respectfully request that this complaint against T-Mobile be closed.

Thank you for bringing this matter to our attention. If you have any questions, please do not hesitate to contact me at the address listed below or toll free at 877-290-6323 ext. 341-7969.

Very truly yours,

T-MOBILE USA, INC.

Diana Johnson
Executive Response

cc: (b) (6) (b) (6)
(b) (b) (6) (b) (6)
Rego Park, NY 11374

February 3, 2017

FILED ELECTRONICALLY

Sharon Bowers, Acting Chief
Consumer Inquiries and Complaints Division
Consumer and Governmental Affairs Bureau
Federal Communications Commission
445 12th Street, SW Room CY-B514
Washington, D.C. 20554

Re: (b) (6)
Your File No. 1375471
T-Mobile Account No. (b) (6)

Dear Ms. Bowers:

T-Mobile USA, Inc. ("T-Mobile") is in receipt of your correspondence dated January 6, 2017, regarding the above-referenced account.

T-Mobile regrets any coverage issues (b) (6) has experienced. Unfortunately, T-Mobile is unable to guarantee coverage in all areas. There are several factors and conditions that may interfere with actual service, quality, and availability.

The T-Mobile Signal Boosters are a group of unique and simple solutions that that improve a customer's in-home coverage, enabling them to make better voice and data connections while in their home. Our Signal Boosters have been found to boost coverage to approximately 3,000 square feet and on average, triple a customer's in-home network performance. T-Mobile records confirm that (b) (6) was sent a Signal Booster on November 15, 2016.

On January 31, 2017, T-Mobile confirmed that (b) (6) home address was known to have poor coverage. However, T-Mobile recently launched a new site in his area. We have found that data speeds of the new site have been among the best T-Mobile has to offer. Our engineering team is currently in the process of making additional adjustments to the settings of the new site to maximize the performance.

In an effort to amicably resolve this matter, on February 1, 2017, T-Mobile issued a courtesy credit in the amount of \$95.81 to the account for monthly access charges from January 17, 2017, through February 16, 2017. (b) (6) account currently reflects a zero balance.

If (b) (6) continues to experience any difficulties with the service, we request that he provide to Customer Care details of the problem, including the date and time and the area(s) in which it occurred, including the major cross streets. Please note that this information is critical to our ability to evaluate and troubleshoot service and coverage issues. Once aware of the situation, T-Mobile can attempt to resolve the issue through network or equipment adjustments. T-Mobile regrets any inconvenience to (b) (6).

Based upon the foregoing, we respectfully request that this complaint against T-Mobile be closed.

Thank you for bringing this matter to our attention. If you have any questions, please do not hesitate to contact me at the address listed below or toll free at 877-290-6323 ext. 341-8075.

Very truly yours,

T-MOBILE USA, INC.

William Bloom

Executive Response

cc: (b) (6) [REDACTED]
[REDACTED]
Cerritos, CA 90703

February 17, 2017

FILED ELECTRONICALLY

Sharon Bowers, Acting Chief
Consumer Inquiries and Complaints Division
Consumer and Governmental Affairs Bureau
Federal Communications Commission
445 12th Street, SW Room CY-B514
Washington, D.C. 20554

Re: (b) (b) (6) (b) (6)
Your File No. 1398434
T-Mobile Prepaid No. XXX-XXX-(b)

Dear Ms. Bowers:

T-Mobile USA, Inc. ("T-Mobile") is in receipt of your correspondence dated January 20, 2017, regarding the above-referenced account.

T-Mobile records indicate that on December 26, 2016, (b) (b) (6) activated a prepaid account and subscribed to the *Pay in Advance Data and Text* rate plan. Please note that this rate plan provides (b) (b) (6) with unlimited domestic and international text messaging, 100 domestic, nationwide incoming/outgoing talk minutes, and unlimited on-network data usage, with the first five (5) gigabytes at up to 4G speeds. This rate plan is billed at a rate of \$30.00 per month and includes a free Data Maximizer feature that is available to our prepaid customer to assist with video streaming.

The Data Maximizer feature is a network enhancement that allows videos to be optimized at 480p+ when streaming, and is available only on Simply Prepaid plans. Data is still debited from the available data bucket, but at a much lesser rate when streaming video. This feature is automatically enabled to allow data to last up to three times longer while streaming video. All video streamed through Wi-Fi will automatically default to the highest available video quality based on the internet service provider. If the connection switches from Wi-Fi to the T-Mobile network, it will automatically adjust to the Data Maximizer optimized video resolution when the feature is enabled. Data Maximizer can be disabled in order to view video in the highest possible resolution but results in faster consumption of 4G LTE data. Please note, (b) (b) (6) may disable the Data Maximizer feature, however by doing so, (b) will also disable the Binge On feature. Binge On is a program that T-Mobile has with over a hundred streaming partners whereby data streamed from those partners does not count against a customer's chosen data allotment. (b) (b) (6) has a bucket of 5GB of high speed data. If (b) (b) (6) chooses to use that bucket to watch videos in a higher resolution, (b) can do so. Alternatively, (b) (b) (6) can choose to keep the Data Maximizer and Binge On functions active so as to enjoy virtually unlimited streaming of the shows, movies and sports that (b) loves most. Data Maximizer and Binge On are functions our customers control and can turn on and off at will.

(b) (b) (6) has also expressed concerns about our newest rate plan offering, *T-Mobile ONE* and how Binge On video streaming works with that plan. However, it should be noted that with (b) Pay in Advance or prepaid type rate plan, (b) (b) (6) is not eligible for a *T-Mobile* One plan.

In response to the core of (b) (b) (6) concerns, effective today, February 17, 2017, T-Mobile announced some changes to the *T-Mobile ONE* rate plan, particularly with respect to the HD streaming options. All current *T-Mobile ONE* customers can now take advantage of HD video streaming and 10GB of 4G LTE high-speed Smartphone Mobile Hotspot *at no additional cost*. Once again, T-Mobile has shown how to be the Un-carrier and we listened to our customers about what they what from their wireless carrier!

Should (b) (b) (6) have additional concerns about the HD streaming under our *T-Mobile ONE* plan, (b) may contact Customer Care. In addition, should (b) decide that (b) would like to become a post-paid customer and take advantage of all the great features included with our *T-Mobile ONE* rate plan, (b) should again, call Customer Care at 800-937-8997. We would love to welcome (b) to our post-paid family and in the meantime, we appreciate his business as a loyal pre-paid customer.

Based upon the foregoing, we respectfully request that this complaint against T-Mobile be closed.

Thank you for bringing this matter to our attention. If you have any questions, please do not hesitate to contact me at the address listed below or toll free at 1-877-290-6323 ext. 341-7986.

Very truly yours,

T-MOBILE USA, INC.

Lupe Chavez
Executive Response

cc: (b) (b) (6)
(b) (b) (6) (b)
Indian Head, MD 20640